

1       IN THE CIRCUIT COURT OF THE STATE OF OREGON  
2               FOR THE COUNTY OF MULTNOMAH

3   The Estate of JESSE D.           )  
   WILLIAMS, deceased, by and    )  
4   through MAYOLA WILLIAMS,       )  
   personal representative,       )  
5                                    )  
      Plaintiff,                    )  
6                                    )  
      vs.                            )   No. 9705-03957  
7                                    )  
   PHILIP MORRIS INCORPORATED,    )   Afternoon Session  
8                                    )  
      Defendant.                    )   Volume 17-B

9  
10               TRANSCRIPT OF PROCEEDINGS

11       BE IT REMEMBERED that the above-entitled  
12   matter came on regularly for jury trial before the  
13   Honorable Anna J. Brown, Judge of the Circuit Court  
14   of the County of Multnomah, State of Oregon, on  
15   Tuesday, March 16, 1999.

16  
17               APPEARANCES

18       Raymond Thomas, James Coon,  
      William Gaylord and Charles Tauman,  
19       Attorneys at Law,  
      Appearing on behalf of the Plaintiff;

20       James Dumas, Walt Cofer, and Billy Randles,  
21       Attorneys at Law,  
      Appearing on behalf of the Defendant.

22  
23               Dennis Apodaca  
24               Official Court Reporter  
      556A Multnomah County Courthouse  
25       Portland, Oregon 97204  
          248-3180

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FOR THE DEFENDANT:

RICHARD CARCHMAN

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Tuesday, March 16, 1999

P R O C E E D I N G S

(Open court; jury not  
present:)

MR. COFER: Your Honor, one matter. Over the lunch hour I thought about your admonition to all counsel to be careful how we phrase questions so as not to ask the witness to comment on the credibility of another witness in the case. I appreciate bringing that to my attention, and I obviously will comply with that.

One problem I have. Dr. Cathy Ellis will testify, it looks like tomorrow. I don't think we are going to get to her today. Cathy Ellis was the head of Research & Development. There has been testimony in this case via deposition from Dr. Ray Morgan where Morgan said he found elevated tobacco specific nitrosamines in the side stream of commercial Virginia Slim cigarettes.

THE COURT: Okay.

1 MR. COFER: Then Dr. Morgan testified he  
2 told Robin Kinser, who was his supervisor, that  
3 Kinser talked to Dr. Ellis and that Dr. Ellis  
4 told Kinser to tell Morgan, destroy the data.  
5 Well, Dr. Ellis is going to come in. She's  
6 going to testify, "No, I didn't. That's not  
7 true."

8 THE COURT: Here is the pure form of the  
9 question you can't ask, and you were real close  
10 to this morning.

11 MR. COFER: Okay.

12 THE COURT: And here is the form of the  
13 question that the Supreme Court bounced and said  
14 trial judges must stop, and that is,  
15 "Mr. Gaylord testified that the light was red."

16 MR. COFER: Right.

17 THE COURT: "You just testified that the  
18 light was green. Now, Mr. Gaylord must be  
19 lying; isn't that right?" Or something that is  
20 so blatant as to compare the testimony of two  
21 witnesses on one. It is the linkage of the  
22 testimony of witness X to -- and in your form  
23 this morning, you were saying, "Would that be  
24 correct?"

25 MR. COFER: Yeah.

1 THE COURT: "The witness had said it this  
2 way, and now you have done this. Would that be  
3 correct?" You can't do it that way. You have  
4 to ask the question in the form of, "Did you do  
5 this, Ms. Ellis? Did anyone ever give you this?  
6 Did you ever tell anyone to destroy it?"

7 MR. COFER: Now, what I want to make sure  
8 I can do, I don't want to run afoul of that, but  
9 I do obviously want to put the connection, text,  
10 in front of the jury so they appreciate the  
11 testimony. I do want to establish who Ray  
12 Morgan was, what Ray Morgan said about those  
13 tests. "Ray Morgan said he was directed to  
14 destroy the test. Did you ever tell him to?  
15 Did you ever tell Ms. Kinser to?"

16 THE COURT: You are probably okay there.  
17 The problem is -- and the best way to phrase  
18 questions is not to refer to a witness by name  
19 at all. It is to say, "We have testimony about  
20 subject X, and we need to have your direct  
21 personal knowledge about it. And did you do  
22 this? Did you do that? What did you say? What  
23 do you know about Ray Morgan? Who is Ray  
24 Morgan?"

25 The vice is if Dr. Morgan said X, he

1 would be lying. That's the absolute extreme  
2 part where you can't go.

3 MR. COFER: I think I have a handle on  
4 that. Let me say from a practical standpoint, I  
5 think we can handle that.

6 I had planned on trying to get both  
7 Jeanne Bonhomme and Dr. Ellis on today. Given  
8 where we are and given we need to leave at 4:00,  
9 that's not going to happen. We may end up a  
10 little short. What I will do is call  
11 Ms. Bonhomme and, depending on how long Ray goes  
12 with Carchman, which may be a while --

13 THE COURT: Yeah.

14 MR. COFER: I don't think it is an issue.  
15 I will bring Dr. Ellis in the morning, but if we  
16 end up at 3:30 and we don't have a witness --

17 THE COURT: You have a reading.

18 MR. COFER: Do we have a reading?

19 THE COURT: We cleared two of them this  
20 morning.

21 MR. DUMAS: Yeah.

22 THE COURT: It didn't look very long.

23 MR. COFER: Can we do those?

24 MR. DUMAS: I am sure we can get someone  
25 in here to do a reading, if necessary.

1 THE COURT: I don't have a feeling we are  
2 going to have a 20-minute cross here. I have a  
3 feeling it is going to be a bit of time.

4 MR. GAYLORD: Can I say something about  
5 the other issue?

6 THE COURT: Yes.

7 MR. GAYLORD: I have a concern a little  
8 different than Your Honor's. I agree that there  
9 is a way to ask those questions where you don't  
10 say, "So-and-so said this, do you have a comment  
11 on that," or "Do you agree or disagree," or  
12 "Would that be true," but the concern I have is  
13 I think just now we had another example, and we  
14 have had several others where I'm not sure I'm  
15 hearing the question phrased about what somebody  
16 else said and the same things that they think  
17 they said it. I don't think Ray Morgan's  
18 deposition includes the statement that indicates  
19 "Ellis told me to do something."

20 THE COURT: And that's the other problem.  
21 It gets us in the middle of Counsel summarizing  
22 someone else's testimony in a way that maybe the  
23 adversary contends is not accurate. On those,  
24 the standard ruling is, the jury is going to  
25 decide who's accurate, and then you get off

1 track again and it interrupts the flow of your  
2 questioning.

3 It isn't a very effective way to get the  
4 job done by trying to summarize what someone  
5 else allegedly said. Just introduce the subject  
6 with a headline. The jury knows this is an  
7 important issue. Somebody has testified that  
8 Philip Morris people told somebody else to  
9 destroy evidence. They got that. They saw.  
10 They will know what you are talking about when  
11 you put the person on the stand.

12 MR. COFER: One other kind of a heads-up  
13 with respect to Dr. Ellis. There were two  
14 items, I believe both are on exhibits, Piadet  
15 and lab stat. The plaintiff has objected to  
16 both as hearsay. I will try to establish that  
17 they are business records. Let me preview what  
18 they are.

19 When it came to Dr. Ellis' attention that  
20 Dr. Morgan was making these representations  
21 about, A, the levels of nitrosamines that he  
22 said he found, and B, what he said Dr. Ellis  
23 told him indirectly to do with them, she had  
24 researchers at Philip Morris attempt to  
25 replicate his experiment. Her testimony would



1 be what Morgan said happened makes no sense  
2 scientifically. A, she didn't do it. B, it  
3 makes no sense. So she said, "Let's replicate  
4 it and let's see." That's a Piadet test  
5 results, and I will argue that was a business  
6 record, that that should come in.

7 THE COURT: Well, who did these?

8 MR. COFER: Philip Morris did it at her  
9 direct request.

10 MR. GAYLORD: What exhibit is that?

11 MR. COFER: Do you know what exhibit it  
12 is?

13 But my point is --

14 MR. DUMAS: She thinks it is 683, but  
15 she's checking.

16 MR. COFER: -- if they do, in fact, have  
17 an objection, there are two ways to deal with  
18 it. One, I will put her on the stand and lay  
19 the foundation. The other is if we want to do  
20 it outside the presence of the jury, I could  
21 have her over here earlier tomorrow.

22 THE COURT: It sounds less like hearsay,  
23 but I'm not recalling the context of the  
24 discussion, and maybe Mr. Coon needs to be  
25 around.

1 Mr. Randles, what would you like to add?  
2 MR. RANDLES: Your Honor, I can tell you  
3 the context we had, if you would like.

4 THE COURT: Sure.

5 MR. RANDLES: What happened, there are  
6 actually two different issues. The notebooks  
7 were on our exhibit list and the hearsay issue  
8 was raised. The Piadet Report was on our  
9 original list. Then pursuant to ETS ruling,  
10 this is the document I mentioned when we are  
11 talking about the Ray Morgan objections that we  
12 withdrew based on our understanding of the ETS  
13 ruling, and when --

14 THE COURT: The ETS ruling?

15 MR. RANDLES: The motion in limine ruling  
16 about Elementary Tobacco Smoke.

17 THE COURT: Okay.

18 MR. RANDLES: You may recall when arguing  
19 the objections to Ray Morgan, I said this  
20 testimony goes to secondhand smoke.

21 THE COURT: That, I recognize.

22 MR. RANDLES: One of the things I raised  
23 was that we had, about the prejudice, surprise  
24 of Ray Morgan in this case, was we had this  
25 report by Piadet on our exhibit list, and we

1       withdrew it. In Mr. Coon's and my meeting we  
2       had, the Court said at the appropriate time we  
3       could move to have it put back on. That's what  
4       this is about.

5       THE COURT: Everybody knows that the  
6       defense wanted that in, and we have got a lot of  
7       notice about meeting to resolve it. We will  
8       resolve. You may want to invite Mr. Coon here  
9       early tomorrow. We do have an 8:30 criminal  
10      matter. That means we can probably take yours  
11      up at 8:45.

12      MR. COFER: I will bring the witness so  
13      we can lay a foundation outside, or whatever the  
14      preference is.

15      The only other thing I am just alerting  
16      plaintiff's counsel to, so Mr. Coon will be  
17      prepared to address as well, Defendant's Exhibit  
18      739.

19      MR. GAYLORD: And '40 and '41, I presume.

20      MR. COFER: I don't know what '40 and '41  
21      are.

22      I don't think we are going to use '40 and  
23      '41.

24      For context, what they are is Dr. Ellis  
25      had an outside lab do some testing on ammonia in

1 cigarettes and whether that made a difference in  
2 free nicotine. She shared those with  
3 Dr. Benowitz, and so she's going to want to talk  
4 about that. And the issue is going to be  
5 whether those are business records, as well.

6 THE COURT: Well --

7 MR. GAYLORD: Those I could speak to, but  
8 if we don't need to do it right now, that's  
9 fine.

10 THE COURT: Right. I suppose it is  
11 analogous to the Piadet Report. To the extent  
12 someone else's record is sent to you is your  
13 business record, I need your analysis on that.

14 MR. GAYLORD: It is a litigation-based  
15 record from two months ago, Your Honor.

16 THE COURT: There, you have it. We have  
17 our arguments. We will take them up in due  
18 course.

19 Juror Dewees passed a note to me that she  
20 needs to schedule a medical appointment for  
21 something that has arisen that is causing her  
22 some concern. It is not interfering with her  
23 ability to be attentive. She wanted to know if  
24 the world was going to come to an end if she had  
25 to schedule an appointment, and she gave me some

1 alternatives. I recommended to her that if she  
2 could get one in a late morning, that would be  
3 the best, and be back by 1:30 or so.

4 She's going to report back to me. She  
5 communicated to me in writing. I have  
6 communicated back to her in writing. I will  
7 keep you posted as we hear.

8 MR. COFER: Obviously, no problem with  
9 that at all. We do have out-of-town witnesses  
10 coming in. Just if we could get as much notice  
11 as possible.

12 THE COURT: Right. She was talking about  
13 a Thursday 11:30 appointment. I assume she  
14 meant this week. We will work around it. If  
15 that means we don't take a morning recess and we  
16 combine the recess with lunch, we are there,  
17 anyway.

18 MR. COFER: We will plan to work our  
19 witnesses around her appointment.

20 THE COURT: I don't know that she has  
21 gone forward to make the appointment. We will  
22 see what she has to say. I wanted you all to  
23 know. That's where we are. Okay.

24 Bring in the jury, please.

25 Go ahead and take a seat, sir.

1 (Open court; jury  
2 present:)

3  
4 THE COURT: All right. Jurors, good  
5 afternoon.

6 Mr. Thomas, you may continue.

7 MR. THOMAS: Thank you.

8

9 CROSS-EXAMINATION

10 (Resumed)

11 BY MR. THOMAS:

12 Q. Dr. Carchman, before lunch you mentioned  
13 a letter, and without going into the legislative  
14 process, would it be fair to say that in 1997  
15 Philip Morris did admit that smoking is a risk  
16 factor for lung cancer?

17 A. It did.

18 Q. Are you aware of statements by the  
19 leadership of your company, Philip Morris, such as  
20 Exhibit 10, which is a Pioneer Press report of  
21 George Weissman?

22 Do you know who Mr. Weissman was?

23 A. Yes, sir.

24 Q. That "the cigarette industry would stop  
25 business tomorrow if it thought its product was

1   harming smokers"?

2       A.    I believe I have seen the document that  
3   says that, yes, sir.

4       Q.    Did Philip Morris ever stop business?

5       A.    Based on Mr. Weissman's comment?

6       Q.    Yeah.

7       A.    No.

8       Q.    Did it ever issue a retraction?

9       A.    Mr. Weissman, the sales/marketing  
10   executive for Philip Morris?

11      Q.    Well, I believe he was vice president at  
12   that time, wasn't he?

13      A.    I'm not sure. I know he was a  
14   sales/marketing fellow. I don't know specifically  
15   what his title was at the time, but the answer to  
16   your question, I believe, is I don't believe so.  
17   I don't know for sure.

18      Q.    At least you have never heard of a  
19   retraction, have you?

20      A.    No, sir.

21      Q.    Are you aware that as recently as the  
22   '80s Philip Morris and the other companies,  
23   through the Tobacco Institute, were allowing a new  
24   scientific White Paper to be circulated which  
25   contained studies showing how other causes of

1 cancer besides cigarettes were associated with  
2 cancer in humans?

3 A. I'm not sure I know specifically what  
4 you're talking about, but in general I may have  
5 heard or maybe even seen some documents that talk  
6 about alternative causes.

7 Q. And those documents were distributed to  
8 people in the United States who might have  
9 questions about what they should do by the Tobacco  
10 Institute acting on behalf of the tobacco  
11 companies, including Philip Morris; isn't that  
12 correct?

13 A. I don't know whether any such documents  
14 were distributed or not, so I can't answer your  
15 question. They may have, but I don't know.

16 Q. Well, can't we assume that Tobacco  
17 Institute was doing its job and actually  
18 distributing those documents that they had  
19 published?

20 A. I mean, we can make any assumption that  
21 you want. I just don't know.

22 Q. Now, you are aware of documents going  
23 back into the '50s where addiction was listed as a  
24 reason that people smoke cigarettes? And I'm  
25 referring to our Exhibit 36 from 1959.



1           A.    If I can see it, I would be able to  
2   comment on it more intelligently. I have seen  
3   lots of documents that I normally wouldn't see  
4   when I was an employee in the normal course of my  
5   job, and I think for me to fairly try to answer  
6   your question, if I can see the document, that  
7   might be helpful.

8           Q.    All right. Let me try to back it up.

9                I am not trying to conduct a memory test  
10   with you, I'm trying to figure out if we can  
11   establish a question-and-answer foundation so I  
12   don't have to take the time to show you a specific  
13   document.

14               Would you agree with me that as far back  
15   as the '50s and early '60s there are Philip Morris  
16   documents that list addiction as one of the  
17   reasons why people smoke cigarettes?

18          A.    I'm not aware -- this is by memory.

19          Q.    Okay.

20          A.    -- it is not perfect -- of any scientific  
21   communications. I believe there are documents,  
22   Philip Morris documents between non-scientists  
23   that talk about smoking and addiction, but I'm not  
24   aware of any scientists within the company, within  
25   R&D that basically talked like that. But I could

1 be wrong.

2 Q. Well, I am just going to check and see if  
3 it is a scientist or not.

4 Exhibit 36. Is a psychologist a  
5 scientist?

6 A. Sometimes they are. Yes, they are.

7 Q. Well, maybe I'm going to show you  
8 something you haven't seen before, but I sure  
9 doubt it. Okay.

10 I'm going to show you 36. I don't think  
11 I need to put it on the viewer. The jury has  
12 already seen it. August of '59 and the specific  
13 sections on Page 2. I have got it highlighted.

14 A. This is 1959?

15 Q. Right.

16 A. Who is -- since I can't read the name --

17 Q. Maybe you could go over here to the  
18 monitor. This isn't designed to be a memory test  
19 of you.

20 Let me ask you this: Just having seen  
21 it, is this a document that you are familiar with?  
22 Have you seen this one before?

23 A. Possibly.

24 Q. Go on over to the monitor, please. I  
25 know it is not a good copy. I know I can make it

1 better.  
2 So it is August of '59, right?  
3 A. Yes.  
4 Q. And do you recognize Dupuis --  
5 A. Yes.  
6 Q. Have I refreshed your memory so we don't  
7 have to go further into it, or do you remember it  
8 now?  
9 A. Only vaguely. I remember seeing this. I  
10 remember seeing the word "addiction," but I don't  
11 remember whether he was talking about something  
12 that is internal to Philip Morris or was a  
13 reflection on something that somebody else had  
14 said outside, maybe in public literature. I just  
15 don't remember.  
16 Q. Maybe you could watch the monitor where  
17 it is big. Do you see that Paragraph 1?  
18 A. Yes.  
19 Q. "Why do people smoke?" And then it has  
20 got some things listed under it.  
21 A. Yes.  
22 Q. And on Page 2, I'm going to represent to  
23 you that there is no more headings. And reason  
24 No. 3, addiction --  
25 A. Yes.

1 Q. -- are you --

2 A. I remember seeing this part. I generally  
3 remember this document. I don't remember whether  
4 it reflects whoever this -- I know Dr. Dupuis'  
5 name. I remember the fellow. I don't remember  
6 who wrote it, whether he wrote it or somebody  
7 wrote it to him. I don't remember whether it was  
8 a representation of what was known or talked about  
9 or theorized in the literature at the time.

10 I have seen lots of documents that list  
11 things like carcinogens, in 1960, and what they  
12 were were a reflection of what was known or  
13 suggested in the literature. I'm sorry I can't be  
14 more helpful.

15 Q. That's okay. Let me try to go back to my  
16 original question and see if I got an answer or  
17 not.

18 Are you aware, sir, of documents as far  
19 back as 1959 from within Philip Morris where the  
20 reasons were discussed for why people smoke, and  
21 listed, among other reasons, the word "addiction"?

22 A. Yes, sir.

23 Q. Are you aware of documents going to  
24 around 1964 when the Surgeon General's Report came  
25 out from George Weissman to Joseph Cullman -- who

1 is Joseph Cullman?

2 A. Joseph Cullman was a senior executive of  
3 the company. He may have been the CEO at the  
4 time.

5 Q. These were guys at the very top of the  
6 company echelon, weren't they?

7 A. Yes, sir.

8 Q. Saying -- this is a quote -- "Now, we  
9 must in the near future provide some answers which  
10 will give smokers a psychological crutch and a  
11 self-rationale to continue smoking." Exhibit 50.

12 Were you aware of those types of  
13 comments?

14 A. I only became aware of them as a result  
15 of this kind of litigation.

16 Q. Nobody showed you or told you when you  
17 got to know about Philip Morris in the very  
18 beginning, back when you were at the university,  
19 what the public position that your future employer  
20 had taken in regard to what they were going to try  
21 to do about cigarettes and cigarette smokers to  
22 keep people smoking the product?

23 A. I'm not sure I understand the  
24 relationship between your quoting this memo and  
25 the statement that you have just made.

1 Q. Well, I guess I assume that part of  
2 figuring out whether you want to work for somebody  
3 or not, and then maybe after you get started with  
4 them, part of deciding whether you want to keep  
5 with them or not is to look at what the history is  
6 of this organization that you have been thrown in  
7 with in terms of what they said about why they do  
8 things and what they do.

9 A. And that's a question I would like to try  
10 to answer, if I might.

11 Q. Well, I would like for you to -- I will  
12 give you a question. Let's see if I can get an  
13 answer for it.

14 When you were in the process of finding  
15 out about Philip Morris in the beginning, did  
16 anybody ever tell you about the fact that part of  
17 what Philip Morris was attempting to do in  
18 response to the Surgeon General's Report was to  
19 give smokers a psychological crutch and a  
20 self-rationale to continue smoking? Did anybody  
21 tell you that or not?

22 A. No.

23 Q. And you didn't find out about it until it  
24 was shown to you as a result of litigation that  
25 forced disclosure of some of these internal

1 documents?

2       A.    I found out about it, as I said, as a  
3 result of this litigation, and I have looked at  
4 the entire document.  And my conclusion was that  
5 Mr. Weissman, I think I tried to say earlier, is a  
6 marketing/sales guy and not a scientist, and I  
7 think he is behaving as a marketing/sales guy  
8 behaves.  To what extent the company acted on  
9 this, the way he talks about it, because I think  
10 there is a further passage in there about hiring  
11 cartoonists and taking -- if I'm right, taking out  
12 cartoon ads was another one of his suggestions, if  
13 you will.

14           And I looked at that and I said, "Geez."  
15 I mean, that didn't happen.  The answer was no, it  
16 didn't happen, but this was -- given this fellow's  
17 background and training, this is, I think, not  
18 necessarily unreasonable, but as far as I can tell  
19 the company didn't behave in that fashion.

20           And to the extent that I came there in  
21 basically 1989, but I had to go working on was not  
22 simply some documents but trying to understand and  
23 study the behavior of the individuals, not simply  
24 the company, whatever the company is.  We are  
25 talking about individuals, people.

1           Clearly, there are some people who say  
2 things that I probably would not and I probably  
3 don't agree with. But in terms of the overall  
4 behavior of the organization and the people that I  
5 dealt with, I didn't see anything that I would  
6 characterize in trying to perpetuate this kind --  
7 this kind of an approach.

8           Again, he is not a scientist. He is a  
9 sales/marketing guy. It is like, your car breaks  
10 down, you go into a battery shop. The first thing  
11 they are going to do is replace your battery. I  
12 think he is just behaving in the context of the  
13 way he thinks. But I don't think the company  
14 acted upon his suggestion. But then again, I  
15 wasn't here -- I wasn't with the company at the  
16 time.

17       Q.   Do you know where Mr. Weissman is these  
18 days?

19       A.   I think he is in New York, but I'm not  
20 sure.

21       Q.   He is retired?

22       A.   Yes, sir.

23       Q.   Probably has an ownership interest in the  
24 company still, huh?

25       A.   I have no idea.



1 Q. Now, you did say one thing, and I can't  
2 let it go. You said that maybe he suggested that  
3 the company take out some cartoon ads. Do you  
4 remember that kind of -- buy some cartoon ads?

5 A. I think that follows that section that's  
6 in that document, if I remember correctly.

7 Q. Well, I wasn't going to go into that, but  
8 now I got to try to set the record straight about  
9 what it really was. Exhibit 50 --

10 MR. COFER: Objection to the comment  
11 preceding the question.

12 THE COURT: Mr. Thomas, would you refrain  
13 from that kind of commentary.

14 MR. THOMAS: All right.

15 BY MR. THOMAS:

16 Q. Would you please come down to the  
17 monitor, sir. I'm going to see if this refreshes  
18 your recollection about whether it was a cartoon  
19 ad or something done surreptitiously.

20 I think this is the section. Tell me if  
21 this refreshes your recollection of the contents.  
22 "Humor and satire. While it should not be done in  
23 the industry's name, someone ought to be  
24 contacting all the cartoonists, television gag  
25 writers, satirical reviews, et cetera, to apply

1 the light touch to this question."

2 A. This has already been highlighted.

3 Q. Yes. It has already been shown to the  
4 jury.

5 A. Yes.

6 Q. Does that refresh your recollection? It  
7 wasn't cartoon ads at all, was it?

8 A. Well, it is pretty close to what I was  
9 thinking. And whether it was surreptitious or  
10 not, in any event, this didn't happen.

11 Q. Well, let me just -- oh, it didn't  
12 happen?

13 A. As far as I know, it didn't happen.

14 Q. Did you conduct any inquiry within  
15 Philip Morris to see if anybody acted within these  
16 suggestions?

17 A. I actually did ask several people if  
18 something like this happened, and I was told it  
19 didn't.

20 Q. Stay there, please.

21 A. To the extent that's an investigation,  
22 you know, in terms of asking, that was the extent  
23 to which I did that.

24 Q. Let's see if we can get it straight  
25 before we go on. It is not cartoon ads, it is

1 that somebody ought to contact these people in the  
2 industry's name to put the light touch on the fact  
3 that smoking is alleged to cause lung cancer,  
4 right?

5 A. If I misspoke, I looked at the word  
6 "cartoonist" and therefore thought cartoonists do  
7 cartoons, and therefore, that's what he was  
8 talking about. If I misspoke, I'm sorry.

9 Q. It really was a surreptitious plan,  
10 wasn't it?

11 A. Well, I don't know how I can characterize  
12 something that didn't happen. But whether it was  
13 surreptitious or not, I can't answer that  
14 question.

15 Q. Okay. Thanks. You can go back to the  
16 stand.

17 A. Okay.

18 Q. Do you know whether or not Philip Morris  
19 ever, or the Tobacco Industry Research Council on  
20 behalf of the industry, ever helped somebody,  
21 funded somebody, write articles that pointed out  
22 that there really aren't health concerns  
23 associated with smoking cigarettes?

24 A. I don't know whether they did or didn't.

25 Q. So it may be that people were

1 ghostwriting things on behalf of the industry?

2 A. I have no knowledge to be able to answer  
3 that question.

4 Q. You just never heard about that one way  
5 or the other?

6 A. I have heard some discussions as a result  
7 of litigation, but I can't answer it any more than  
8 that. It is nothing that I had looked into. I  
9 may have seen a document that talks about that,  
10 but actually prior to seeing the document, I never  
11 even heard of the Tobacco Institute Research  
12 Council.

13 Q. But you have heard of the Tobacco  
14 Institute, haven't you?

15 A. Yes, I have.

16 Q. That's a modern-day organization?

17 A. It was. I don't know if it is still in  
18 existence or not.

19 Q. It may have ended its existence as  
20 recently as a year ago, right?

21 A. Could very well be.

22 Q. Did it voluntarily end its existence or  
23 was it involuntarily terminated?

24 MR. COFER: Objection, Your Honor. May  
25 we approach?

1 THE COURT: Yes.

2 (Discussion at the bench  
3 off the record.)

4 MR. THOMAS: I will withdraw the last  
5 question.

6 THE COURT: Thank you.

7 BY MR. THOMAS:

8 Q. But, in any event, it no longer exists?

9 A. Yes, sir.

10 Q. Are you aware of the fact that within the  
11 industry, within Philip Morris, there has been  
12 concern raised about how the company can't defend  
13 itself against lawsuits by people who died smoking  
14 its products if they were addicted to the product?

15 A. Arguments within the industry and  
16 Philip Morris.

17 Q. Arguments within -- let's just say  
18 Philip Morris.

19 A. That the company can't defend itself if  
20 the consumers are addicted to the product?

21 Q. Yeah.

22 A. I have heard arguments like that,  
23 discussions both within the company and I have  
24 read it in press reports, as well.

25 Q. Would you be willing to admit that

1 liability considerations play a role in the  
2 companies, and even in your refusal to admit your  
3 cigarette products are addictive for some people?

4 A. I think you are asking me -- if you are  
5 asking me a legal question, I can't answer that.

6 Q. I'm not.

7 A. If you are asking me a question as to  
8 whether I would say or not say something as a  
9 result of somebody asking me or telling me not to  
10 say something, I would not. I will say whatever I  
11 think is correct, depending upon my knowledge of  
12 things.

13 Q. Well, I guess now I'm not sure. I guess  
14 you heard talk within the company about how to  
15 admit addiction may be a problem for the company.  
16 Is that right?

17 A. There has been discussions that I have  
18 heard, may have even been party to, that included  
19 that. It wasn't necessarily focused on that, but  
20 it included those kinds of issues.

21 Q. With the conclusion being that it's going  
22 to be harder for Philip Morris to defend itself in  
23 taking positions that smoking is free choice if at  
24 least some of its customers are addicted to its  
25 products?

1           A.    I am sure that somebody said that,  
2 included that as part -- as part of the  
3 conversation. But I think those kinds -- that  
4 kind of question, I think, is a reasonable  
5 question, given the nature of the environment that  
6 we live in today when people are -- we are  
7 involved in such litigation, people are always  
8 asking questions and some of these are driven from  
9 internal issues and some of them are driven by  
10 commentaries or statements made in the press. And  
11 we're talking about intelligent people saying, "I  
12 read this, I heard this, can we talk about that.  
13 What do you think?"

14                But what I'm trying to say is, those  
15 conversations are representative of the kinds of  
16 things that at least I was a party to in the  
17 cafeteria where the scientists would be sitting --  
18 technical people would be sitting around having  
19 lunch and saying, "Did you read this? Did you  
20 hear about that? What do you think it means?"  
21 But they were the people that worked in the R&D  
22 center.

23           Q.    There are a number of other Philip Morris  
24 people within Philip Morris around in the '70s or  
25 '80s that are still working for Philip Morris,

1 aren't there?  
2 A. Yes, sir.  
3 Q. In fact, there is a person whose name is,  
4 was it Hall, Dr. Hall? What's that guy's name --  
5 A. I don't believe I know anybody --  
6 Q. What was the name of the fellow that gave  
7 the presentation on the Accord in the Minnesota  
8 case, Livie (phonetic)?  
9 A. Lilly.  
10 Q. Lilly?  
11 A. Dr. Cliff Lilly.  
12 Q. He has been around for a considerable  
13 length of time, hasn't he?  
14 A. 31, 32 years, something like that.  
15 Q. And he has testified about the Accord and  
16 some of the history of the company?  
17 A. He is an outstanding scientist/physicist.  
18 I would call him one of the fathers of the Accord.  
19 Many of the things, the technical things -- the  
20 technical things I talked about, the metal alloy  
21 and the batteries and the energy profile, that's  
22 Dr. Lilly.  
23 Q. He is not here today?  
24 A. He is not in this courtroom today, no.  
25 Q. Well, now, in terms of what Philip Morris



1 did about research, I think you testified before  
2 lunch that there was an initial that was "GLP"  
3 that INBIFO laboratory has.

4 A. Yes.

5 Q. "Good laboratory practices"?

6 A. Yes, sir.

7 Q. There is no reason that a United States  
8 laboratory couldn't have GLP, good laboratory  
9 practices, is there?

10 A. There are many laboratories in the United  
11 States that have GLP accreditation.

12 Q. And Philip Morris could have had a  
13 top-quality laboratory to do its biological  
14 testing in the United States, couldn't it have?

15 A. Yes, sir.

16 Q. You are aware, are you not, that at some  
17 point there was discussion within the  
18 Philip Morris company about whether they should do  
19 some of the testing in the United States or  
20 whether they should do the testing abroad, right?

21 A. Yes, sir.

22 Q. You are aware, are you not, that Joseph  
23 Cullman, III -- he was the chief executive officer  
24 in the company, wasn't he?

25 A. Yes.

1 Q. He wrote to one of the scientists, or one  
2 of the top executives that Philip Morris should  
3 conduct its testing in Europe to avoid  
4 unattractive repercussions in this country. Do  
5 you know about that?

6 A. I remember seeing a memo. I don't know  
7 who it was written to, whether it was written from  
8 Mr. Cullman to Dr. Wakeham, but I'm sure we can  
9 find that.

10 Q. Well, the jury has already seen it. I am  
11 just going to see if maybe -- Exhibit 75 -- if you  
12 can use the judge's monitor and make sure I read  
13 it properly, because you said you were thoroughly  
14 familiar with -- I don't know if I'm saying it  
15 right, INBIFO?

16 A. INBIFO.

17 Q. -- with INBIFO.

18 A. Yes.

19 Q. "The possibility of getting answers to  
20 certain problems on a contractual basis in Europe  
21 appeals to me, and I feel presents an opportunity  
22 that is relatively lacking in risk and  
23 unattractive repercussions in this country."

24 That told you the exhibit number and the  
25 date. You could probably see that.

1 February, 1970. That was before your time, wasn't  
2 it?

3 A. I'm sorry?

4 Q. Before your time at the company?

5 A. Yes.

6 Q. Were you aware of this document?

7 A. Only as a result of litigation, yeah.

8 Q. Are unattractive repercussions in this  
9 country a legitimate reason to decide to do  
10 research offshore as opposed to onshore for a  
11 responsible company?

12 A. I think the answer to your question is, I  
13 don't know what was in Mr. Cullman's mind when he  
14 wrote these words, but as you asked me earlier in  
15 terms of my examination of INBIFO, my examination  
16 occurred primarily at two levels. One had to do  
17 with the degree of scientific competence and the  
18 degree to which they actually follow the necessary  
19 processes to maintain good science, which would  
20 include scientific integrity document retention.

21 This kind of information that you are  
22 showing me here, that deals with other aspects of  
23 it, was not anything I was aware of at the time,  
24 though it's of interest to me now.

25 All I can tell you is that in the ten

1 years that I was there, and from my  
2 responsibilities with INBIFO, this kind of  
3 document is in a time warp. It does not  
4 represent, as I saw it, the behavior of the  
5 company and the behavior of the scientists at  
6 INBIFO.

7 I really can't speak to what Mr. Cullman  
8 was talking about, but whatever this thing might  
9 suggest, this document might suggest, is not at  
10 all how I would characterize how the institute  
11 behaves and how the company behaves. As I said  
12 earlier, a lot of the eight hundred thousand  
13 million documents from INBIFO have already been  
14 turned over. I don't know whether there was  
15 litigation going on at the time with the company  
16 or not.

17 I don't really know the context, the  
18 environment he was writing this, but in terms of  
19 the actual behavior of the folks at the institute  
20 and the folks I dealt with, whatever we did over  
21 there was specifically related to some business  
22 needs, and it is now on the internet.

23 Q. Well, it is true that it is on the  
24 internet, but it wasn't Philip Morris' choice to  
25 put it on the internet. It is on the internet

1 because it was ordered disclosed in a lawsuit;  
2 isn't that right?

3 A. I believe that's correct.

4 Q. Philip Morris resisted that entire  
5 procedure, didn't they?

6 A. Absolutely.

7 Q. Yeah. And in terms of the way that  
8 INBIFO came about in terms of acquisition, you are  
9 also aware, are you not, of Plaintiff's Exhibit 76  
10 from 1970, again on Philip Morris -- the jury has  
11 seen this. I am going to go quickly through it.

12 You are aware, are you not, that when the  
13 decision was being made about whether or not to  
14 purchase INBIFO -- and this is from Wakeham to  
15 Goldsmith, "Since we have a major program at  
16 INBIFO and since this is a locale where we might  
17 do some of the things which we are reluctant to do  
18 in this country, I recommend that we acquire  
19 INBIFO either in toto or to the extent of  
20 controlling interests."

21 Are you familiar with this document?

22 A. Again, I have read this as a consequence  
23 of this kind of litigation.

24 Q. And I guess I'm going to ask you a  
25 question about this, too. Is this the way that

1 you would see this company behave?

2 A. All I can tell you, in terms of my time  
3 of employment with the company, and my  
4 interactions with INBIFO, I found nothing at all  
5 that would lead me to believe that this is the way  
6 things were operating.

7 Q. Now, Mr. Cofer went through Exhibit 88,  
8 the dummy mailing ads, eliminating written  
9 contact, and those are things, I guess, that also  
10 preceded the time that you were with  
11 Philip Morris.

12 A. Yes, sir.

13 Q. I'm going to show you something that I  
14 don't think that you were shown.

15 MR. THOMAS: Counsel, that's Exhibit 106.

16 BY MR. THOMAS:

17 Q. I'm going to ask you if you recognize  
18 this document.

19 Now, are you familiar with the term  
20 called "deniability"?

21 A. I think I know what the word means.

22 Q. Tell the jury what does "deniability"  
23 mean?

24 A. To deny something. To reject something.

25 Q. And is it sort of a term that says that

1 if a person acts in a particular way, or a company  
2 acts in a particular way, they can maintain  
3 deniability about something that might be  
4 controversial if they had to admit it?

5 A. I guess so. I really don't know. This  
6 sounds more like more legal than scientific,  
7 but --

8 Q. Well, are you familiar with the letter of  
9 1980 -- I guess this is getting a little bit  
10 closer to your time regarding the nicotine  
11 receptor program. Would you take a look? This is  
12 already into evidence and the jury is familiar  
13 with it. I'm going to go pretty quickly through  
14 it.

15 "We, within the industry, are ignorant of  
16 any relationship between smoking and disease.  
17 Within our laboratories no work is being conducted  
18 on biological systems."

19 Are you familiar with this document?

20 A. This is a Dr. Dunn memo to --

21 Q. Seligman?

22 A. -- Seligman.

23 Q. Yeah.

24 A. Yes, sir, I am familiar with it.

25 Q. And you are also aware probably then of

1 the fact that "Our attorneys, however, will likely  
2 continue to insist upon a clandestine effort in  
3 order to keep nicotine, the drug, in low profile"?

4 A. This is -- I remember reading this memo  
5 several times from Dr. Dunn, who I believe is a  
6 psychologist. When I read this, first, I thought  
7 this was something that a lawyer had prepared and  
8 not a psychologist. And I concluded, not having  
9 been there, looking at this memo, that I don't  
10 have a clue as to why Bill Dunn, Dr. Bill Dunn,  
11 wrote this memo as if he was behaving as if he was  
12 a lawyer.

13 Now, Dr. Dunn had left before I came to  
14 Philip Morris, and I can't tell you why he wrote  
15 that the way he did, but I find it somewhat odd,  
16 very odd that somebody in Research & Development  
17 would be writing something that is so laced with  
18 legalese without having referenced some specific  
19 conversation with some lawyer.

20 So I don't know if this is something he  
21 conjured up himself based on something, or as a  
22 result of some conversation he had with some  
23 lawyer, but I find it sort of not within what I  
24 would call the domain of R&D.

25 Q. Well, I sure agree with you there.



1           Now, the question of whether or not this  
2 is something that was written as if it sounded  
3 like it came from a lawyer or -- and I would like  
4 to suggest an alternative interpretation and have  
5 you consider it, whether, in fact, it sounds like  
6 somebody who is having work directed by lawyers,  
7 "Our attorneys, however, will likely continue to  
8 insist upon a clandestine effort in order to keep  
9 nicotine, the drug, a low profile"?

10       A.   When I read this, I then reflected -- the  
11 beginning part of that memo, the very first page  
12 on the very top, if I'm correct, refers to  
13 Dr. Abood and the nicotine receptor. Thank you.  
14 Yes.

15           And this is the Dr. Abood we were talking  
16 about earlier who was really considered one of the  
17 fathers of nicotine research and the Dr. Abood who  
18 carried out the work on the nicotine analog  
19 program for the company. And the work I have  
20 seen, either preceding that or following that, and  
21 today, says to me that whatever he is talking  
22 about is not evident in terms of research in this  
23 area being carried out by the company.

24           So research like this was going on  
25 before. It was going on during, and it went on

1 after. So I don't know if Bill Dunn is talking to  
2 himself here or actually making some meaningful  
3 comment, because again, it is not evident by the  
4 fact that Philip Morris carried on this kind of  
5 work.

6 Q. Bill Dunn was somebody within the company  
7 who had a considerable amount of responsibility,  
8 did he not?

9 A. He was a scientist in the company and he  
10 was assigned at least one or two areas where he  
11 had responsibility, yes.

12 Q. And one thing, I'm sorry, but I just have  
13 to come back to, because I can't just let it rest,  
14 and that's Exhibit 108. Mr. Cofer walked you  
15 through that one.

16 You remember the letter of 1980. I will  
17 just put it on the monitor and you can look over  
18 at the judge's. This is the one from  
19 Mr. Seligman. I think you already said --  
20 Seligman was what?

21 A. He could have been the Research &  
22 Development for Philip Morris at the time.

23 Q. Yeah. He was a pretty big guy, vice  
24 president of Research & Development, wasn't he?

25 A. He ran R&D, yes, sir.

1 Q. He was a Ph.D. just like you?  
2 A. He had a Ph.D. in a different area than  
3 mine, yes.  
4 Q. But same level of educational attainment?  
5 A. He has a Ph.D. Whether he did a  
6 post-doctorate, I don't know.  
7 Q. All right. Now, what happened was, he  
8 put in a list of three subjects which he felt  
9 should be avoided, right?  
10 A. Yes, sir.  
11 Q. And are you telling the jury that the  
12 reason that these -- now, this, of course, was  
13 sent over to Lorillard. It was sent over to a  
14 different tobacco company, right?  
15 A. Yes.  
16 Q. Are you saying the reason that these  
17 subjects should be -- it doesn't say, "Subjects we  
18 don't care about anymore," does it?  
19 A. No. The header says -- if you would read  
20 it.  
21 Q. "Subjects to be avoided."  
22 A. Yes, that's correct.  
23 Q. It doesn't say, "Things we don't need to  
24 learn about anymore"?  
25 A. It says "to be avoided."

1 Q. "To be avoided." And what you are  
2 testifying to the jury is that these were things  
3 that just -- it wasn't that they were trying to  
4 avoid these things, it was that they didn't need  
5 to have these questions answered anymore?

6 A. No, no. There were two parts to my  
7 answer. That was the second part.

8 The first part was if I took those three  
9 bullet points, if you will, that says, "Subjects  
10 or areas to be avoided," and go back to the  
11 previous page, the page that has that list of a  
12 dozen, dozen and a half areas that they wanted to  
13 investigate, when I looked at those areas that  
14 they wanted to investigate, that was spot onto  
15 what the third page said they wanted to avoid. So  
16 it didn't make any sense. It didn't make any  
17 sense to me.

18 So the second part of my answer was a  
19 rationalization on my part to try to understand  
20 how these two things could fit together. I know  
21 for a fact only one thing, that the second page  
22 that was -- the 16 or 17 things were exactly what  
23 the third page said. If one reads it literally  
24 without understating the context, they just don't  
25 fit together. You can't say to avoid doing this

1 and then list the things that go right at the  
2 heart of trying to understand some of those  
3 things.

4 So the second part of my answer was my  
5 attempt to try to rationalize, bring those two  
6 together.

7 Q. All right. I guess I skipped over the  
8 first part, I went to your rationalization,  
9 because the way I recalled it is that you  
10 testified that you couldn't much understand how  
11 those things went together, and perhaps they  
12 weren't relating to the same document.

13 Maybe somehow the document, the pages got  
14 messed up, but you never told the jury, at least I  
15 didn't hear you, you never said that, "Oh, this is  
16 one of those things where the pages got messed  
17 up," did you?

18 A. I'm sorry?

19 Q. You didn't say that, did you?

20 A. No, I didn't.

21 Q. No, you didn't. That's why I skipped  
22 over it.

23 In fact, if you look at the letter, it  
24 says -- to review these two separate lists, it  
25 says, "Additionally, I have added a list of three

1 subjects which I feel should be avoided," right?

2 A. (The witness nodded affirmatively.)

3 Q. And then we go right there to that third  
4 page, and there it is, "Subjects to be avoided,"  
5 just like he said, right?

6 A. Yes, sir.

7 Q. Okay. Again, I say this was before your  
8 time, huh?

9 A. Yes, sir.

10 Q. Okay. Now, I think I asked this of a  
11 previous witness, and they couldn't help me on it,  
12 but maybe you can.

13 Do you know who -- do you know who  
14 Mr. Osdene is, right?

15 A. Dr. Tom Osdene, yes.

16 Q. And Dr. Osdene, he is still around, isn't  
17 he?

18 A. He is in Richmond, Virginia.

19 Q. Is he still working for the company?

20 A. Oh, no, he retired shortly after I came  
21 to the company. Shortly thereafter.

22 Q. Did you see enough of his work while you  
23 were at the company to be able to recognize his  
24 handwriting?

25 I will put 153 on here and put you to the

1 test. Could you recognize that man's handwriting?  
2 I think it is fairly distinctive.

3 A. I have seen this document before, and it  
4 has been identified to me as Dr. Osdene's. I have  
5 never seen his personal handwriting before, but I  
6 have no reason to say that this is not  
7 Dr. Osdene's handwriting.

8 Q. All right. Now, did you ever find out  
9 what documents got destroyed when he says, "If  
10 important letters have to be sent, please send to  
11 home. I will act on them and destroy."

12 A. I believe in terms of my investigations,  
13 both early on, before I knew -- before I knew  
14 about this, I very carefully investigated what  
15 INBIFO did and how they kept their records. They  
16 even had records prior in their archives, prior to  
17 Philip Morris' purchase of the company.

18 In terms of documents from INBIFO, they  
19 went to other people besides Tom. They went to  
20 Jim Charles, they went to Bob Pages, and they went  
21 to whoever the head of R&D was at the time. And  
22 they probably also went to whoever was the head of  
23 the R&D in Neuchatel.

24 So I don't know what he is talking about  
25 here, but in terms of any documents -- I think

1 this is referring to INBIFO, if I remember  
2 correctly.

3 Q. I think you're right.

4 A. I don't believe that INBIFO has destroyed  
5 or hidden any documents that they have created in  
6 the course of their business that even precedes  
7 Philip Morris' purchase of the company in 1971,  
8 '72.

9 Q. Well, let's see. Did you ever go to  
10 Dr. Osdene and have him -- or somebody else from  
11 Philip Morris and have him compile a log of those  
12 things that he destroyed?

13 A. Well, the "in going" assumption is that  
14 things were destroyed. What I am trying to  
15 communicate here is that I found no evidence that  
16 any INBIFO documents were hidden or destroyed.

17 Now, Dr. Osdene may have gotten documents  
18 from INBIFO that he also disposed of by whatever  
19 means he wanted to. The point I'm making, INBIFO  
20 itself has kept every single document that it has  
21 created. What other people within the company did  
22 with those documents, I have no control over.

23 I can tell you in terms of documents I  
24 received from INBIFO, I either kept them, I  
25 distributed them to whoever needed to see them, or



1 I sent them back to INBIFO, or put them in central  
2 files.

3 Q. So I guess that's the answer to that --  
4 the answer to that is, if Dr. Osdene destroyed  
5 documents, there is no list of those documents  
6 that he destroyed that anybody had him prepare,  
7 right?

8 A. Well, I will say it again, to the best of  
9 my ability. He may have disposed of documents. I  
10 have no idea. But whatever documents he got from  
11 INBIFO still existed in INBIFO.

12 MR. THOMAS: I'm going to object as  
13 nonresponsive.

14 THE COURT: The witness has answered your  
15 question, Mr. Thomas. Proceed.

16 BY MR. THOMAS:

17 Q. So no list has ever been created by  
18 Dr. Osdene, right?

19 A. Not that I am aware of.

20 Q. Okay. That was my question.

21 Now, you called INBIFO a center for  
22 excellence.

23 A. Yes.

24 Q. And you said, I think, that the only  
25 place that ventilation testing is done is over

1   there in Europe, right?

2       A.   Within the company, yes.

3       Q.   And you have had INBIFO documents,  
4   haven't you?

5       A.   Yes.

6       Q.   In fact, you had a whole room of them  
7   filled from the floor to the ceiling, isn't that  
8   right?

9       A.   Yes, sir.

10      Q.   And your boss told you to send those  
11   documents back to INBIFO, away from the United  
12   States and back over to Europe, correct?

13      A.   He told me to please send back those  
14   documents I wasn't using or I had no immediate  
15   need for.

16      Q.   And then you were told that if the  
17   documents were needed over here in the United  
18   States, well, then we could send for it and get  
19   them back from Europe, right?

20      A.   Again, I will try to say it as clearly as  
21   I can. I sent back those documents I no longer  
22   had a need for and kept those that I did have a  
23   need for. And if some question came up about  
24   something I didn't have, then they would send it  
25   back to me.

1 Q. And the ones that you sent away -- you  
2 sent about 95.99 percent of them away, right?

3 A. I sent back most of the preliminary  
4 reports. I kept the vast majority of the final  
5 reports. Of the preliminary reports that I kept,  
6 and the final reports that I kept, they were  
7 almost totally related to the ingredient  
8 evaluation. And the fact that the six outside  
9 consultants were coming through to look at  
10 information, I knew I needed to keep those on hand  
11 for them to look at.

12 And sometimes they would ask me a  
13 question in one of their visits that was not  
14 evident in either the preliminary report or didn't  
15 go into the kind of detail they wanted in the  
16 final report, in which case I had to call up  
17 INBIFO and have them look for the additional  
18 information which they sent.

19 And so I guess what I am trying to say, I  
20 thought I kept all the necessary information from  
21 INBIFO that I needed to do the job that I was  
22 doing. Sometimes it worked, sometimes it didn't  
23 work. Because I couldn't foresee all of the  
24 questions that were coming from me -- for example,  
25 the outside consultants where I was spending, I

1 would say, most of my time related to what was  
2 going on at INBIFO.

3 Q. A roomful of documents, that would be  
4 probably half a container full or two-thirds a  
5 container full that would have to go by truck over  
6 to the coast and go across on an ocean liner over  
7 to Europe, right?

8 A. I don't know what size that would be. I  
9 did have a variety of documents, including INBIFO  
10 documents, microfiched and stored. And I had my  
11 own microfiche reader.

12 Part of the pressure I was getting was  
13 that the secretarial staff was getting highly  
14 annoyed with me and they needed some places to  
15 store stuff, and I was filling up all the space  
16 with my stuff. And so I did two things. I sent  
17 some stuff back to INBIFO, I microfiched, reduced  
18 the volume to something that can fit into a  
19 folder, a catalog holder, if you will, that I  
20 could then access in my office.

21 So I guess I am guilty of trying to be  
22 responsive to some of the questions that the  
23 support staff was asking me. But everything I  
24 sent back at that time were things that I felt I  
25 didn't need to have in terms of doing my job.

1 Q. And the reason that you were given for  
2 sending those documents back was that there was  
3 more room over there for the documents than there  
4 was here, right?

5 A. No. That was my -- part of my reason for  
6 doing that. The documents existed, whether they  
7 were in Richmond or Neuchatel or Germany. I had  
8 the documents I needed, for the most part.  
9 Clearly there were some exceptions. If I had a  
10 problem, I got them right back.

11 Q. But you decided that they should go back  
12 over to Europe because there would be more room  
13 for them than you had, right?

14 A. They had a special archival facility for  
15 doing that.

16 Q. And Philip Morris didn't have a place to  
17 put them?

18 A. They had several places, several places  
19 to put them, but none that I wanted to put them in  
20 other than my control and my office, or back at  
21 INBIFO.

22 Q. All right. I'm going to switch gears to  
23 some questions that I have about research  
24 possibilities.

25 We heard about some people who smoke

1 cigarettes to test the flavors for Philip Morris.  
2 Apparently, Philip Morris employees or volunteers  
3 or something. That's what Mr. Scott testified.

4 Has Philip Morris ever followed up on any  
5 of those test smokers to see what long-term  
6 effects smoking those cigarettes has on their  
7 health?

8 A. It is possible. I'm not aware of that.

9 Q. Well, what was your -- what was your  
10 position before you retired?

11 A. I was vice president in research,  
12 development and engineering.

13 Q. Wouldn't it be fair to say if there were  
14 any tests done on those people, you would know  
15 about it?

16 A. I probably would, but I'm not aware of  
17 any tests that were done.

18 Q. How about is Philip Morris -- I will  
19 restrict this to R&D. R&D is Research &  
20 Development, right?

21 A. Yes.

22 Q. Do you guys ever go like to VA hospitals  
23 or other hospitals, like we have got a Kaiser  
24 Hospital here, we have got some big hospitals here  
25 in Portland, to check the health of the

1 Philip Morris smokers who began smoking in times  
2 of stress like, I don't know, in Korea or Vietnam,  
3 and to see what the long-term effects of smoking  
4 the Philip Morris product is on those people?

5 MR. COFER: Object, argumentative.

6 THE COURT: Overruled. Go ahead and  
7 answer.

8 THE WITNESS: Are you asking if we have  
9 carried out any medical follow-up or evaluation  
10 or epidemiology on employees that fit into this  
11 category that you have described? And the  
12 answer is I'm not aware of any such evaluation.

13 BY MR. THOMAS:

14 Q. That was my first question about  
15 employees. This is like people like Jesse  
16 Williams, or veterans that started smoking in  
17 Korea or Vietnam who are now in their 50s and 60s  
18 who have been smoking Philip Morris products for  
19 years just to see, well, what has the effect  
20 been -- of smoking the product on those people  
21 been?

22 A. I know there is physicians on staff in  
23 Richmond, and I know that there is a health  
24 maintenance organization, and I know that  
25 Philip Morris employees go to that. Whether

1 information relating to those employees and their  
2 smoking habits or other habits are captured or  
3 not, I have no idea.

4 Q. All right. Now, I don't think you got my  
5 question down. It is not employees. It is people  
6 like Jesse Williams. They never worked for  
7 Philip Morris. All they do was buy the product.  
8 They started in Korea, they started in Vietnam,  
9 and by 1999 they have been smoking for 30, 40  
10 years Philip Morris products. Loyal smokers.

11 Anybody ever go to the VA hospital or the  
12 other hospitals to see how they are doing with the  
13 product?

14 MR. COFER: Objection, cumulative, beyond  
15 the scope and argumentative.

16 THE COURT: The objections are overruled.  
17 The witness may answer, and then you need to  
18 move on.

19 THE WITNESS: I'm not aware of any  
20 Philip Morris investigation into those areas  
21 that you have asked me about.

22 MR. THOMAS: Thank you.

23 BY MR. THOMAS:

24 Q. Does PM, Philip Morris, ever check in  
25 with long-time, long-term Marlboro smokers to see



1 if a percentage of those people are addicted to  
2 the product or not?

3 A. I don't know how to answer that question  
4 at all. Philip Morris has lists of people who  
5 smoke their product or products, and ask them  
6 questions about their product. I'm not aware of  
7 any questions that the company has directed  
8 employees or representatives of the company to ask  
9 that kind -- those kinds of questions.

10 Q. All right. Well, then I'm going to ask  
11 one little third part of it. That is, has  
12 Philip Morris ever directed any independent  
13 scientists of unimpeachable integrity to examine  
14 whether or not long-term smokers of Marlboro  
15 cigarettes are addicted at higher percentage  
16 levels than non-Philip Morris products?

17 A. I'm not aware of any research anywhere in  
18 the world that addresses that question.

19 Q. Has Philip Morris ever studied whether or  
20 not the low-tar cigarettes that it makes actually  
21 cause fewer cases of lung cancer for the people  
22 who smoke them?

23 A. Only insofar as I have described the  
24 epidemiology studies herein, which those  
25 epidemiology studies don't deal with specific

1 brands. They primarily deal with filter,  
2 nonfilter, or various levels of tar delivery.

3           There are some epidemiological studies  
4 that deal in other parts of the world with  
5 different kinds of cigarettes, different kinds of  
6 tobaccos, but I'm trying to think -- I can't think  
7 off the top of my head any published  
8 epidemiological study done by the American Cancer  
9 Society or any other scientific organization that  
10 specifically looks at brands.

11       Q.    I guess that means that Philip Morris  
12 never did it.

13       A.    That's correct.

14       Q.    You did a chart and -- you don't have to  
15 get up.

16           Do you remember this chart?

17       A.    Yes.

18       Q.    And it showed the correlation between  
19 lowering the amount of the milligrams of tar in a  
20 cigarette versus biological activity?

21       A.    Ames. Mutagenicity.

22       Q.    Mutagenicity?

23       A.    Yes, sir.

24       Q.    Was there factored into this test the  
25 compensatory behavior of cigarette smokers?

1 MR. COFER: I would ask that the witness  
2 be allowed to see the chart if he is going to --

3 THE COURT: Mr. Thomas, the jurors need  
4 to see the witness, too. You are squarely in  
5 their way. You have got to either move it or  
6 let the --

7 MR. THOMAS: I wanted to show the chart  
8 to refresh everybody's recollection to see what  
9 we are talking about.

10 THE WITNESS: That's an interesting  
11 question. Let me try to answer it in the  
12 following way:

13 No. 1, compensation was not addressed in  
14 this study. If compensation were to occur, that  
15 is where people would smoke more cigarettes, get  
16 more tar, or smoke the cigarettes differently to  
17 get more tar, you would just move up that line.

18 So if you had somebody hypothetically  
19 that smoked an 11-milligram product in a way  
20 that delivered 16 milligrams of tar, you would  
21 just go up that line to wherever the 16  
22 milligrams were.

23 So these -- this data is derived from FTC  
24 smoking machine numbers, but my belief, based on  
25 my scientific knowledge, would be that any

1 compensation that would take place, depending on  
2 the degree of compensation, you could just go up  
3 and down, up and down that line.

4 BY MR. THOMAS:

5 Q. One of the -- I guess the ways that this  
6 could be reasonably interpreted is that  
7 Philip Morris has really made a genuine effort to  
8 lower the tar levels that are reaching its  
9 customers, right?

10 A. That's the way I look at it, yes.

11 Q. Well, are you aware that in this case  
12 what Jesse Williams smoked, when he was smoking  
13 the regulars, was the 100s?

14 A. I believe so.

15 Q. Now, the 100s, relative to the regular  
16 lengths, Philip Morris Marlboros, even have higher  
17 tar, don't they?

18 A. More tobacco, more tar.

19 Q. And the same could be said for the  
20 100-length lights that Mrs. Williams testified  
21 Jesse Williams smoked when he was trying to cut  
22 down?

23 A. If he smoked the entire cigarette, if he  
24 smoked the 85-millimeter and then smoked the  
25 100-millimeter, if he smoked the 100-millimeter,

1 whatever it was, lights or regular, and consumed  
2 15 millimeters more tobacco, he would get  
3 potentially that much more tar.

4 Q. And, of course, that much potentially  
5 more nicotine, isn't that right?

6 A. That's true.

7 Q. As I recall, you topped this one at how  
8 much more likelihood that a person smoking a  
9 high-tar cigarette will get cancer than a smoker.  
10 Wasn't it about 11 times?

11 A. Than a nonsmoker?

12 Q. Yeah.

13 A. Yes. That was the relative risk term  
14 reported in the '98 paper that I cited.

15 Q. Well, isn't it true, sir, that you know  
16 that a person who smokes two packs a day is 18  
17 times more likely than a nonsmoker to get lung  
18 cancer?

19 A. I think that's -- the relationship  
20 between the amount you smoke, how long you smoke,  
21 when you started smoking, all of those things are  
22 related to the risk. The number that I presented  
23 of 11 was the overall risk number. If you smoke 4  
24 packs of cigarettes a day for 40 years, your risk  
25 for lung cancer is going to be greater than 11.

1 Q. And isn't it also true that if I added  
2 into the equation that Jesse Williams smoked the  
3 100s, as opposed to the regular length, two packs  
4 of those would even be a higher likelihood of  
5 getting lung cancer than for somebody who smoked  
6 the regular length, because the 100s contain more  
7 tar than the regular lengths?

8 A. If you believe, as I do, that there is a  
9 dose relationship in most relatively biological  
10 systems, and if you believe, as I do, that tar is  
11 an important factor in lung cancer and the more  
12 tar you take in, the greater the risk.

13 Q. And did Philip Morris ever tell Jesse  
14 Williams that he should be smoking the lower tar  
15 cigarettes in order to lessen his chances of  
16 getting lung cancer?

17 A. I have actually asked that question and  
18 the answer that I get is, we are forbidden by law  
19 to basically address anything that comes close to  
20 a health claim related to our product.

21 Q. Oh. Well, what if you put on the outside  
22 of the 100s, "More carcinogenic than the regular  
23 length"?

24 A. Well, based on --

25 Q. Would you be prohibited by law from

1 putting that on there?

2 A. Based on this, this is not carcinogenic,  
3 this is mutagenic.

4 As I said in my discussion with the  
5 Accord product and the tests that we did, and I  
6 talked about the nature of these tests, and I  
7 talked about them being flags and mileposts, and I  
8 said there are things that are mutagens that are  
9 carcinogens and there are things that are  
10 carcinogens that are not mutagens.

11 And so the answer to the question is we  
12 don't use this test to predict carcinogenicity, we  
13 use it as a red flag to alert us. What this means  
14 to the smoker at the end of the day, nobody knows.

15 Q. I guess if nobody knows, you can't tell  
16 them about it, can you?

17 A. Well, if you don't know -- what is it  
18 that you plan on telling somebody, other than what  
19 the government basically mandates we tell and what  
20 the government basically mandates we can't tell.

21 And I don't know what would happen if  
22 Philip Morris went to the federal government, to  
23 the Federal Trade Commission and said -- raise  
24 that question that you raised. All I know is that  
25 when I ask the question about, I guess the

1 opposite -- the counter to your point about lower  
2 tar being less carcinogenic, the answer would have  
3 clearly been no. Maybe I should go back and ask  
4 the other question, as well. But I pretty much  
5 know from a scientific perspective that nobody  
6 knows the answer as to whether these changes  
7 clearly are reflecting some increase in cancer.  
8 It is something that we believe is important, but  
9 I can't be any more precise than that.

10 Q. Well, in the present state of the  
11 knowledge about the connection between smoking and  
12 cancer that you just described for the jury, do  
13 you think that it would be a deceptive practice --  
14 that's kind of a legal term.

15 Do you think it would be a dishonest  
16 practice, do you think it would be a lie, in light  
17 of people not knowing, for Philip Morris, through  
18 its Tobacco Institute or the Tobacco Industry  
19 Research Council to ghostwrite an article for  
20 publication to people who read magazines with the  
21 title, Smoke Without Fear?

22 A. I don't know what you are talking about  
23 in terms of specifics. So this is based on  
24 something real or is it a hypothetical?

25 Q. It is a hypothetical, but it is based on



1 evidence that we have heard in this case.

2 A. So if you could say it again for me.

3 Q. I will try it again.

4 If, given the state of what you described  
5 uncertainty about the connection between smoking  
6 and cancer, Philip Morris, through its Tobacco  
7 Industry Research Council, sponsored, assisted,  
8 edited an article called Smoke Without Fear,  
9 that's the title for it, which was published in  
10 the popular press, that would be a dishonest  
11 thing, wouldn't it?

12 MR. COFER: Objection, form of the  
13 question. Vague as to time. And ambiguous. If  
14 there is such an article, I ask that be  
15 presented to the witness.

16 THE COURT: The objection is that the  
17 question is not time specific. So cure that,  
18 please, Mr. Thomas.

19 JUROR 6: Your Honor, I didn't hear your  
20 ruling.

21 THE COURT: I'm sorry. I'm asking  
22 Mr. Thomas to make his question time specific to  
23 address the objection.

24 BY MR. THOMAS:

25 Q. Please, sir, try to remember all the

1 parts of the question. August of 1954. Please  
2 give the jury the answer.

3 MR. COFER: Objection. Could I have that  
4 question read back so I know what he is being  
5 asked to respond in 1954?

6 MR. THOMAS: I will ask it again. Would  
7 that make it easier for the court reporter?

8 THE COURT: Sure, go ahead.

9 BY MR. THOMAS:

10 Q. I'm going to ask you if Philip Morris,  
11 through the Tobacco Industry Research Council,  
12 assisted in research and editing and publication,  
13 in light of the unknown nature between cigarette  
14 smoking and cancer that you have described exists,  
15 and the article went into the popular press and it  
16 was entitled Smoke Without Fear --

17 A. 1954?

18 Q. -- wouldn't that be a dishonest thing?

19 A. I would love to see -- I would love to  
20 see the article, because I have a historical  
21 interest in that period of time with regard --  
22 with respect to smoking and health and the public  
23 health community on the tobacco industry. So I  
24 would really like to see it.

25 I remember reading a document called The

1 Frank Statement from 1954 that talks about two  
2 very important issues. I think one had to do with  
3 the belief about things at that current point in  
4 time, 1954, about what they believed to be true.  
5 And the second had to do with what it is that they  
6 are going to do about their beliefs.

7 And in looking at that from a 1954  
8 perspective, I don't have many scientific concerns  
9 with what they listed as their beliefs. 1999, I  
10 would say those -- many of those things that they  
11 listed in there are no longer scientifically  
12 valid.

13 So I'm not sure that's what you're  
14 talking about, or something else, or is it related  
15 to that?

16 Q. I think we have heard enough of the  
17 answer. I will tell you what, though, now that  
18 you mentioned The Frank Statement, there were some  
19 things and the jury has seen that a few times.

20 A. Okay.

21 Q. And you know kind of about the contents,  
22 right. I don't need to put it up anymore. I will  
23 come up there, just so we are on the same  
24 document.

25 Do you see what parts I like from it?

1 They are all highlighted, aren't they?

2 A. Those are the parts you highlight. I  
3 actually like the whole document.

4 Q. I'm going to ask you about one part of  
5 it, okay?

6 A. Okay.

7 Q. This is the part. This is what I call  
8 the promise. Let me ask you if this sounds like a  
9 promise to you. "We accept an interest in  
10 people's health as a basic responsibility  
11 paramount to every other consideration in our  
12 business," with the Philip Morris name right below  
13 it?

14 A. Yes, sir.

15 Q. Is that a promise?

16 A. Actually, I think it is more than a  
17 promise, within the context that I put this piece  
18 of paper.

19 There is a left side of this paper, of  
20 this document, and a right side. The left side  
21 basically says, "This is what we believe," and it  
22 actually refers to something what appears to be  
23 some discussion with some outside scientific  
24 authorities in terms of what might be going on.  
25 It also specifically had that piece in there that

1 has the word "paramount" in it.

2 So this is what we believe in 1954, it  
3 says on the right side, and --

4 Q. Let me do this for the jury. I really --

5 MR. THOMAS: I'm going to object as  
6 nonresponsive.

7 THE WITNESS: I wasn't finished.

8 MR. THOMAS: I know.

9 THE COURT: And I can't rule until he  
10 does, so your objection will have to wait. Let  
11 the witness finish and you can ask me to  
12 reconsider it.

13 MR. THOMAS: Go ahead and finish.

14 THE COURT: Okay. Go ahead.

15 MR. THOMAS: This is Exhibit 5, for the  
16 record.

17 THE WITNESS: One of the things that  
18 caught my eye right away was that the right side  
19 of the document, the numbers are larger than the  
20 numbers on the left side. And to me, that's the  
21 promise, "This is what we're going to do. We  
22 are going to fund research."

23 I said to myself, "Okay, what did they  
24 do? What did they fund and who used it?" Then  
25 what I found was, what they were talking about

1 was the Council for Tobacco Research and the  
2 research efforts that they were going to fund.

3 Now, I had some familiarity with some of  
4 the members of the SEB of CTR before I joined  
5 the company, and I knew that much of the  
6 research that they were funding was high  
7 quality, if not all of it. I also knew that the  
8 U.S. Surgeon General had incorporated much of  
9 the findings that were as a result of that  
10 funding.

11 Then I came back to the part you  
12 highlighted on the left about the paramount  
13 importance. And I said to myself, well, that's  
14 what people like me are doing. That's what I  
15 have been doing for the ten years I was with the  
16 company. And I can basically say there were a  
17 number of us that have been working full-time  
18 over the years on basically trying to address  
19 the nature of this product and being responsive  
20 to the public health community. So I  
21 internalized that in terms of what I thought my  
22 roles and responsibilities sort of embraced.

23 In looking back at other people, I could  
24 identify people that historically over time were  
25 basically sitting in the same type of position

1     trying to deal with the things, some of which we  
2     talked about.

3             The culmination of the Accord on the test  
4     market, I look at as fulfilling part of that  
5     promise on the left side of that statement,  
6     which isn't a scientific -- is not a scientific  
7     document. And it was nothing I would have read  
8     to the degree I have read it today, if not for  
9     the questions that have been raised about this  
10    document.

11            So, just me, Rich Carchman, scientist,  
12    former employee of Philip Morris, I actually  
13    felt pretty good that I was part of a team that  
14    was contributing to trying to move the ball down  
15    the field. And this product Accord was really  
16    the culmination of many decades worth of effort.  
17    So I felt pretty good about it.

18            Now, in terms of other aspects of the  
19    company behavior with regard to that statement,  
20    I'm not in a position to adequately address  
21    that. I could only deal with it from my own  
22    personal experiences and from the experiences of  
23    people around me. So I think the company has  
24    allowed me -- and actually more than allowed me,  
25    has given me the responsibility, one of the

1 people that has been given a responsibility to  
2 address what's in that Frank Statement.

3 MR. THOMAS: I will withdraw the  
4 objection.

5 BY MR. THOMAS:

6 Q. I will ask you, you began discharging  
7 this responsibility in 1999, right?

8 A. Yes, sir.

9 Q. And there were people who -- Osdene,  
10 Wakeham, Dunn, they were doing what they felt they  
11 needed to do to discharge what I call the promise:  
12 "We accept an interest in people's health as a  
13 basic responsibility paramount to every other  
14 consideration in our business."

15 A. I can't speak for anybody other than me,  
16 particularly people that I don't know. I did not  
17 know Dr. Dunn. I met Dr. Wakeham once. I knew  
18 Dr. Osdene, but not as he was performing  
19 scientific activities at the company.

20 Q. Has anybody ever told you that one of the  
21 reasons that you were chosen to come here today is  
22 because your activities in the company postdated  
23 their involvement, and therefore, you cannot talk  
24 from firsthand experience about some of these  
25 things that were going on at that time, right?



1           A.    That was never -- I'm not aware of any  
2 discussion about that relating to the issue you  
3 framed in the question.

4           Q.    Sir, as I remember, you told the jury  
5 when you first got introduced yesterday, when your  
6 history with Philip Morris was inquired to by  
7 Mr. Cofer, I think you said that you were a  
8 one-tie guy in 1988.

9           A.    Yes.

10          Q.    And here in 1999, February month, you are  
11 now retired from Philip Morris after about ten  
12 years?

13          A.    That's correct.

14          Q.    Well, one of the things that I can do is  
15 ask about whether or not bias plays a role in some  
16 of the decisions you have made, personally and  
17 professionally, that have led to your testimony  
18 today.

19                Can you tell the jury, please, what was  
20 it that you made, in terms of income, when you  
21 were in the academia before you joined  
22 Philip Morris for the year?

23          A.    In 1988 I had a salary of less than  
24 \$70,000 a year, and I did consulting, outside  
25 consulting work. I was allowed by the university

1 to consult one day a week, okay? And I think the  
2 last year I had \$15,000 or \$20,000 in consulting  
3 money.

4 Q. So let's just say, to make it fair, and  
5 the higher end of the range, \$90,000 in 1988. And  
6 if you had stayed in your professor position and  
7 had about the same relative amount of consulting  
8 work, what would you have made in 1997?

9 A. I could make an extrapolation based on  
10 some of my colleagues who are still at the medical  
11 school.

12 Q. All right.

13 A. And in terms of base salary, it is close  
14 to \$150,000 a year. But that doesn't -- that's  
15 the base salary. That would not include any  
16 consulting.

17 Q. And so you had, oh, maybe 10, 15 percent  
18 in addition, so --

19 A. I have colleagues who do no consulting.  
20 I have colleagues who do some consulting. I have  
21 colleagues that consult such that their consulting  
22 income is a multiple of their salary. It just  
23 depends on what you want to do with your life.

24 Q. All right. Now, in terms of your  
25 compensation with Philip Morris, did you -- are

1 your income figures for 1997 with any bonuses or  
2 incentives or stock purchases or pension, anything  
3 like that, has that all settled down to the point  
4 for what -- you know what you made for 1997? I'm  
5 not asking you what it was, just whether or not  
6 you know.

7 A. I believe I do.

8 Q. How about for 1998? Has that calmed down  
9 to the point that you know what it will be?

10 A. I may find out this week.

11 Q. All right. Let's go back to '97 then. I  
12 figured that may be the situation.

13 So what was, with your stock options --  
14 with any bonuses, that sort of thing, what was  
15 your total income from working with Philip Morris  
16 in 1997?

17 A. I can't talk about stock options, because  
18 I don't remember. Okay. I had executed stock  
19 options over the years. I can tell you with my  
20 bonus and salary that my income from Philip Morris  
21 was about \$250,000 in 1997.

22 Q. And if you were to tell me how many  
23 shares of stock you got in 1997, I think I could  
24 probably do it in my head, tell you what that was  
25 worth right now.

1       A.   Well, as you know, the way options are  
2   given, it is not like they give you the stock.  
3   They say, "Here is the option. Here is the  
4   price." I can tell you what my options are now,  
5   or I can tell you what the value of those options  
6   are now.

7       Q.   Sure.

8       A.   I have 20,000 -- about 20,000 shares of  
9   options that are worth about \$60,000.

10      Q.   So basically, I think, just to make it  
11   simple, 1997, you made \$250,000 plus stock  
12   options?

13      A.   I made 250,000. The stock options is a  
14   paper value that can rise or fall.

15      Q.   Okay. And that gives you some ownership  
16   interest in the company, fair?

17      A.   With several million other people, yes.

18      Q.   And your income in the company has been  
19   more than it would have been as a professor,  
20   certainly, hasn't it?

21      A.   Not counting consulting, the answer is  
22   yes.

23      Q.   And in terms of your retirement now, you  
24   are a consultant at this time, is that fair to  
25   say?

1 A. Yes.

2 Q. And one of the jobs that you have as a  
3 consultant is to testify in cases like this one,  
4 to give presentations with these charts, and  
5 things like that?

6 A. My responsibility as a consultant is to  
7 testify.

8 Q. And what do you charge for your services  
9 now?

10 A. \$2,500 a day. But I have only given the  
11 company 100 days.

12 Q. Well, that means that's a limit, is that  
13 right?

14 A. That's correct.

15 Q. A hundred days in court per year?

16 A. No, sir. As I said yesterday, there are  
17 three areas that I am responsible for in my  
18 consulting, only one of which is litigation.

19 I can tell you for the month of February,  
20 which is behind us, that less than one-third of  
21 the time that I spent related to litigation. The  
22 other two-thirds dealt with product integrity  
23 issues and then scientific issues. So I think I  
24 had 6 -- 20 days in February, 6 of which were  
25 related to litigation. This month is going to be

1 different, I believe, because I'm here.

2 Q. So what I know from -- hold on. Let me  
3 make sure I am right.

4 There is 220 work days for a working man  
5 in a work year, correct?

6 A. That's right.

7 Q. You are going to get \$250,000 for a  
8 hundred of them?

9 A. Yes. And I arrived at that number --  
10 when I left the university, I was getting between  
11 \$1,000 to \$1,500 a day to consult. That was ten  
12 years ago. And I believe that I can go out now  
13 and get that kind of money without Philip Morris  
14 or not dealing with tobacco issues. I think that  
15 is a number that I arrived at was, in my mind, a  
16 fair representation of what I could get if I went  
17 out and consulted for somebody else that was  
18 interested in my knowledge and expertise outside  
19 of the tobacco industry.

20 Q. Okay. Fair enough. But you have limited  
21 it to a hundred hours --

22 A. Hundred days.

23 Q. A hundred days, and it is going to be  
24 \$250,000?

25 A. If they use that.

1 Q. Now, another question that I have is, in  
2 terms of R&D, we have talked a lot about R&D and  
3 what R&D did. Well, R&D, when you were involved  
4 in the company, it wasn't just working on smoking  
5 and health, was it? It had other  
6 responsibilities, too, correct?

7 A. Absolutely.

8 Q. And one of those was looking at product  
9 integrity?

10 A. Actually, product integrity has an  
11 integral smoking and health component to it.

12 Q. Sure, it does. I guess you would say --  
13 how do I say it -- entomology?

14 A. Entomology, the study of bugs.

15 Q. Is part of R&D?

16 A. Still is.

17 Q. That could have a smoking and health  
18 consequence, too, if people are smoking insects,  
19 that would be a problem?

20 A. Probably not smoking and health.  
21 Probably esthetic and taste perspective, for sure.

22 Q. That was part of the job in R&D. I want  
23 the jury to understand there were other things  
24 besides --

25 A. You are absolutely right. I am sorry if

1 I left that impression. I was talking about  
2 myself and some other people. I wasn't talking  
3 about the 650 people in Richmond.

4 Q. Okay. That's all I wanted to deal with,  
5 that in terms of R&D you were high enough in R&D  
6 that you know that R&D over the last 25 years,  
7 from like '69 to 1994, R&D has actually gotten  
8 about 5 percent of the money that Philip Morris  
9 has spent on advertising, isn't that right?

10 A. That could very well be. I have not  
11 tracked what they spent on advertising. I have  
12 some idea what they spent on at least our R&D  
13 function.

14 Q. I think I made a mistake. Let me try  
15 again.

16 At 5 percent of the -- 5 percent of  
17 the -- now, I'm getting confused. Let me try it  
18 again. Sorry. Sorry. I did this before in the  
19 opening statement. Let me try telling it to you  
20 and see if your recollection is the same as mine.

21 The numbers that I have for the ratio of  
22 R&D to advertising -- and by "advertising,"  
23 marketing, advertising and promotion -- is R&D  
24 1,230,000,000 versus 18,074,000,000. Kind of a 1  
25 to 20, 5 percent, basically, ratio. Does that



1 sound about right?

2 A. I think that is consistent -- I haven't  
3 analyzed this in detail, but it is consistent with  
4 some numbers I have heard.

5 Q. All right. That sounds about right?

6 A. Again, it is consistent with the numbers  
7 I have heard.

8 Q. Okay. Thank you.

9 THE COURT: Mr. Thomas, would you  
10 approach with Mr. Cofer.

11 (Discussion at the bench  
12 off the record.)

13 THE COURT: Here is the deal, jurors. We  
14 are going to have to recess early today for  
15 reasons that have nothing to do with the case.  
16 There is another 15 minutes of cross and another  
17 20 of redirect. The option you have is to take  
18 a recess now and delay getting out early, or  
19 just pressing through another 35 minutes without  
20 a break. If anybody wants a break, we will take  
21 it.

22 JUROR: I have to go to the restroom.

23 THE COURT: We could do a shorter break.  
24 How is that?

25 No more than ten minutes. And then we

1 will press through. The lawyers have committed  
2 to 15 minutes more on cross and 20 minutes on  
3 redirect, and I'm going to call time when they  
4 reach there. So they are going to be held to  
5 their promise, and maybe ten minutes for you,  
6 and you will be out of here early today.

7 Notes on the chair, please.

8 (Recess.)

9

10 (Open court; jury  
11 present:)

12 (

13 THE COURT: All right. Jurors, we are  
14 ready to continue.

15 Mr. Thomas.

16 MR. THOMAS: Thank you.

17 BY MR. THOMAS:

18 Q. 15 more minutes. Right there. Okay.

19 Acid aldehyde. You were asked some  
20 questions by Mr. Cofer about acid aldehyde, and it  
21 is right that acid aldehyde is not an additive to  
22 Marlboros, it is a constituent in the smoke,  
23 right? It comes from burning of sugars?

24 A. Actually, I showed a board that had acid  
25 aldehyde on it, yes.

1 Q. And what I said was correct?

2 A. Yes.

3 Q. And in terms of the way -- well, let's go  
4 to the Next. The Next was never actually sold  
5 here in Portland, was it?

6 A. I don't know. There were six test  
7 markets.

8 Q. Okay.

9 A. I can't tell you which ones they were.

10 Q. Well, let's talk about the likelihood was  
11 going to be something that even worked, you are  
12 aware, and we have seen documents, and I'm all  
13 ready to put them on the board, but I think maybe  
14 we can move through it fairly quickly, that it was  
15 known and talked about within Philip Morris back  
16 into the '60s that, for example, Exhibit 59, "A  
17 cigarette that doesn't deliver nicotine cannot  
18 satisfy the habituated smoker, cannot lead to  
19 habituation, and would almost certainly fail."  
20 That's a quote that you are familiar with, isn't  
21 it?

22 A. I have seen documents that had words to  
23 that effect.

24 Q. And then Dunn, you know, D-u-n-n --  
25 cigarettes, the vehicle is smoke; smoke is the

1 vehicle. Nicotine. Nicotine is the vehicle of  
2 pleasurable body response." You are aware of  
3 that?

4 A. This is the big Dunn memo from the  
5 St. Martins meeting.

6 Q. Well, no, this one is back in 1969, a few  
7 years before that. Along the same line, I think.  
8 I have a good faith basis for saying it to you.  
9 It sounds like the kind of thing that Dunn said,  
10 isn't it?

11 A. It sure does sound.

12 Q. The St. Martin. "The product is  
13 nicotine." You remember that stuff?

14 A. Yes.

15 Q. "Think of the cigarette as a unit, or a  
16 dose, and the puff as a unit," that sort of thing?

17 A. I remember the document.

18 Q. Okay. Well, did people smoke for the  
19 nicotine?

20 A. I believe some people smoke for nicotine,  
21 yes.

22 Q. Some people wouldn't smoke if there  
23 wasn't nicotine in the cigarette, right?

24 A. I think the content -- that is also true  
25 as well.

1 Q. Are you aware of any Philip Morris  
2 studies where Philip Morris decided to see if  
3 nicotine would or would not be addictive to  
4 humans?

5 A. I thought you asked me this question  
6 before, and I thought I said no then. I think the  
7 answer still is no.

8 Q. All right. I'm sorry. I might have  
9 forgotten it. I guess I did.

10 But you are aware of peer review articles  
11 that have been published about it being addictive,  
12 right?

13 A. About nicotine being addictive, yes.

14 Q. So if you could come down here, I think I  
15 worked on this over the break, and I will give  
16 you -- actually, I will hold the pointer. Come  
17 over here next to me.

18 A. (Witness complies.)

19 Q. Okay. This is a crude Next. Now, the  
20 Next didn't have any nicotine, right?

21 A. No, not true.

22 Q. That's incorrect?

23 A. That's correct.

24 Q. It had a very, very tiny amount of  
25 nicotine?

1       A.    It had, as I said, 97 percent of the  
2    nicotine removed from the tobacco in the  
3    cigarette.

4       Q.    And did it have enough nicotine for a  
5    habituated smoker to get physiological response  
6    when they smoked it?

7       A.    Well, since I can't answer your question  
8    scientifically, I can tell you that this cigarette  
9    that had 9 -- it is okay if I write on this?

10      Q.    Yeah, go ahead. I know you're going to  
11   do it anyway.

12      A.    Predictable. 97 percent reduction in  
13   nicotine.

14      Q.    Right.

15      A.    But when you smoke this cigarette, you  
16   actually got .1 milligrams of nicotine in the  
17   smoke. Okay. So that's the actual amount of  
18   nicotine.

19            Based on FTC testing and from some of my  
20   scientific colleagues in the public health  
21   community, it doesn't really matter how you smoke  
22   this, you are going to get 0.1 milligrams of  
23   nicotine.

24      Q.    So I could take that thing and I could  
25   put my lips -- if I was willing to look like that

1 down here, just really pull on it, and I am just  
2 not going to get any more than .1 milligrams?  
3 A. That's all you are going to get.  
4 Q. It takes the compensatory out of the  
5 ability to change the amount of nicotine, right?  
6 A. From that -- but if you smoked --  
7 Q. Right?  
8 A. -- lots of these, you know, if you were  
9 willing to do something like that, yes.  
10 Q. Just like I guess I could get drunk on  
11 Near Beer if I was willing to subject myself to  
12 enough of that stuff?  
13 A. Is that a local --  
14 Q. Near Beer.  
15 A. Near. Got you.  
16 Q. Low-alcohol beer.  
17 A. Okay.  
18 Q. Okay. Now, I put this here which says,  
19 "Next, basically no nicotine."  
20 A. And I just --  
21 Q. I got you.  
22 A. I made it complete.  
23 Q. Now, yet it still had the  
24 tobacco-specific nitrosamines in it, right?  
25 A. Yes.

1 Q. So we really had none or very little of  
2 the nicotine, but we still had the bad stuff from  
3 the tobacco?

4 A. That's what I tried to point out using  
5 one of the boards.

6 Q. So if I was to say that it had little or  
7 none of the nicotine, but all of the cancer, you  
8 might want to say mutagenicity, or could I say  
9 cancer for purposes of this series of questions,  
10 we agree that it had little or no nicotine but  
11 pretty much all of the cancer?

12 A. I will agree with you, it had little or  
13 no nicotine, and it had all of the other things in  
14 it that we're trying to get rid of or reduced.

15 Q. Can we say why it is that we're trying to  
16 get right of them?

17 A. Because the public health community  
18 believes that those things are potentially  
19 dangerous in terms of cancer and other diseases.

20 Q. "We're really doing it at Philip Morris  
21 to satisfy them, we don't really believe it  
22 ourselves"?

23 A. No. As I told you, from an operational  
24 perspective you have to basically accept that to  
25 do -- to do this kind of work.



1 Q. Okay.  
2 A. Okay.  
3 Q. What do we want to call that, those  
4 things are believed by the public health community  
5 to do, because I want to write a word in here. I  
6 was going to write "cancer." I could write  
7 "mutagenicity." Is "cancer" fine?  
8 A. "Cancer" is fine.  
9 Q. It had little or no nicotine, but it had  
10 almost all of the cancer.  
11 Well, now I want to go to the Accord.  
12 Now, the Accord, if it is developed now -- if it  
13 comes out and turns into something real for  
14 consumers, it is too late for Jesse Williams,  
15 isn't it?  
16 A. Yes, sir.  
17 Q. Okay. Well, let's just say it does come  
18 out and it is a real product for people. It has  
19 the nicotine, doesn't it?  
20 A. It delivers --  
21 Q. Go ahead and write it down.  
22 A. .3 milligrams of nicotine.  
23 Q. And that's three times the Next, right?  
24 A. That's correct.  
25 Q. And that's enough, I think you talked

1 about it, as if a juror might -- you were pointing  
2 to the jurors, you could go out and have a little  
3 bit and, you know, have a smoke break, really, and  
4 come back in?

5 A. Yes, sir.

6 Q. Would that be enough -- I'm not saying  
7 that anybody in our jury is addicted, but let's  
8 say they want to go out and at least feel the  
9 nicotine, is it enough to give a person -- if they  
10 took eight inhalations, is it enough to feel the  
11 nicotine?

12 A. Sense the nicotine?

13 Q. Well, yeah, you know, kind of get a  
14 little rush, kind of a wake-up thing?

15 A. I don't know.

16 Q. You don't know. You didn't -- okay.  
17 Have you had human test subjects who are  
18 sensitive to nicotine who can say whether or not  
19 this is about -- "Gets me where a cigarette does"?

20 A. The only human subjects that I'm aware  
21 of, aside from the consumers that are testing this  
22 in the market, are the panelists that we use, both  
23 internal and external panelists, in terms of  
24 looking -- they fill out a ballot in terms of --  
25 this is not my area, but it is called subjective

1 or taste, and there are a number of descriptors:  
2 Is it strong? Does it coat your mouth? Do you  
3 like it? Throat grab? There are a variety of  
4 little things that they check off that they try to  
5 relate back to the product that they use.

6 Q. Well, let me ask you this: Is there any  
7 reason that Philip Morris doesn't have its  
8 internal testers test Accord where they say,  
9 "Well, you know, I'm a guy" -- this is like a  
10 hypothetical, right?

11 "I'm a guy when I get up in the morning I  
12 like to have a cigarette within ten minutes of  
13 when I wake up and, you know, if I smoke a Merit  
14 or an ultra-low tar, it just doesn't cut it for  
15 me. I need something -- I want something more. I  
16 want a fuller-flavor smoke."

17 Is there any reason why Philip Morris  
18 wouldn't have its internal people kind of  
19 substitute in the Accord for what they might smoke  
20 normally, like a Marlboro, see if it satisfies  
21 their need that way?

22 A. I'm the wrong person for asking those  
23 questions to.

24 Q. Oh, okay. All right. Fair enough.

25 In any event, it does give people

1 nicotine, right?

2 A. Amongst other things, that amount of  
3 nicotine.

4 Q. But it doesn't give people the cancer, at  
5 least like a regular cigarette, because there is  
6 not real pyrolysis like we have got with a lit  
7 ember, right?

8 A. The assumption we are making is that less  
9 tar is better.

10 Q. Okay.

11 A. You go from this tar to this tar, this is  
12 not only quantitatively less, but it's  
13 qualitatively less.

14 I think I drew something on the bottom of  
15 that line. It is off the line. So qualitatively  
16 it is a different kind of tar than the tar you get  
17 from this cigarette.

18 Q. All right. So I won't say it's no  
19 cancer, but I will say it is lower cancer, okay?

20 So let me just keep going, because I have  
21 got a couple more minutes and I want to make sure  
22 I get through this.

23 It is no surprise that the Next failed,  
24 in light of the fact that it didn't give people  
25 nicotine but it contained the products that we're

1 concerned about with cancer, is it?

2 A. If it were that simple, they actually  
3 took this product and put nicotine back in it and  
4 it still wasn't acceptable. And, looking back, it  
5 is not surprising at all.

6 That Dunn memo about the units of  
7 delivery and the book, if you look in that book,  
8 there is a chapter by Murray Jarvick, which was an  
9 American Society funded study --

10 BY MR. THOMAS:

11 Q. Let me interrupt you for a second. If  
12 you go too long, I'm not going to be able to ask  
13 you another question.

14 A. Okay. I will say it real quick.

15 MR. COFER: Your Honor, I will give him  
16 five minutes of my time to complete your answer.

17 THE WITNESS: Thank you.

18 He took lettuce, made cigarettes out of  
19 lettuce. People have done it with the silk on  
20 corn and smoked it. And he got people to smoke  
21 lettuce cigarettes.

22 He then asked the question: If we put  
23 nicotine on those cigarettes, would they smoke  
24 more of them? And the answer was no. That was  
25 19 -- late '60s. And then 1994, Dr. Benowitz

1 did a similar study with a similar result.

2 So it probably, if people had really  
3 understood that, was no surprise that you take  
4 this tobacco, extract 97 percent of the  
5 nicotine, plus some other stuff, and you put the  
6 nicotine back, it doesn't help. So there is  
7 some other things going on here that nobody  
8 really knows about. They saw it with lettuce  
9 twice, at least. And we have seen it now here  
10 with this product.

11 MR. THOMAS: I thank Mr. Cofer for the  
12 time.

13 BY MR. THOMAS:

14 Q. It also, as a result of the process,  
15 isn't it right, just to be fair, it doesn't taste  
16 so good to smokers?

17 A. I think that's precisely it.

18 Q. In terms of this question, I would like  
19 you to assume for a minute that for some people  
20 nicotine is addictive. Okay. For purposes of  
21 this. Some people, not everybody, but some  
22 people.

23 Well, in a situation like that, if the  
24 Accord is marketed and developed, what's going to  
25 happen is, people will be less -- they are going

1 to be buying -- less likelihood of cancer -- but  
2 if it's addictive, they are still going to be  
3 buying a product that is going to addict some of  
4 them if it is addictive, right?

5 A. That's a possibility, given that  
6 hypothetical.

7 Q. And we just can't know right now what's  
8 going to happen with the Accord, can we?

9 A. No, we can't.

10 Q. Now, Philip Morris had some great  
11 diagrams. This one, it shows the nonconventional  
12 cigarettes, and I think maybe you even drew on  
13 that. Didn't you draw us a time line?

14 A. No.

15 Q. I thought maybe you did.

16 Well, a person could put the Next in  
17 here, couldn't they? Wasn't there a time line  
18 with the Next on it?

19 A. Yes. That's another board. That's the  
20 one where you have the Post-It to block out --

21 Q. Okay. Was that a time line?

22 Let's say the Next is on here. Now, I  
23 guess with this stuff going on --

24 MR. THOMAS: Is that it?

25 MR. COFER: Uh-huh.

1 BY MR. THOMAS:

2 Q. We will just say that the Next came out  
3 in '89, right in here. For purposes of this  
4 question, Philip Morris, I guess all the way back  
5 to 1976, if they were attacked or failing to be  
6 responsible in taking care of people's health,  
7 back in '76, they could have said, "Well, we are  
8 working on this Delta." In 1982 they could say,  
9 "Well, we are working with these experiments with  
10 electric heating."

11 Now, these things didn't come onto  
12 market. In '76 there wasn't any way of knowing  
13 whether it was or wasn't. In '82 there really  
14 wasn't any way of knowing whether it was or  
15 wasn't. In '87, the Delta II, if somebody was to  
16 testify in '87 there wouldn't be any way of  
17 knowing right then whether it was coming to the  
18 market or not. '88, no way of knowing. '89, with  
19 the Next, there wasn't any way of knowing right  
20 then whether it was going to be a wonderful  
21 success or not. So somebody could testify from  
22 Philip Morris in 1989, "We think we have solved  
23 the problems."

24 Now, here we are in '98 with you  
25 testifying that we have got this wonderful new



1 product, and if the Accord turns out to have --  
2 well, a faulty heater, if the Accord turns out  
3 that the battery technology just didn't work out,  
4 if the Accord works out to just taste terrible, if  
5 the Accord turns out to fail for any number of  
6 reasons, but let's say that doesn't happen for  
7 five years or more, Philip Morris still could have  
8 come in front of the jury, say, back in 1999, and  
9 say, "But, look at all we did to try to make it  
10 better."

11 And my question to you, sir, and this  
12 will be my last question -- actually, it consists  
13 of a number of different phrases.

14 Back in 1976, you guys didn't quit trying  
15 to sell Marlboros. Back in 1982, you guys didn't  
16 quit trying to sell Marlboros. Back in '87, back  
17 in '88, in '89, when you did the Next, you guys  
18 were still selling billions of cigarettes. In  
19 fact, even today, 1998 and 1999, you are still  
20 selling what they say back from where I'm from,  
21 they are still selling the dog from out of those  
22 Marlboros, aren't they?

23 A. Is that a question you want me to answer?

24 Q. Yes.

25 A. I think what you represented here is an

1 inadequate description. Yes, we were selling  
2 Marlboros. And over that period of time -- and  
3 there was a board that showed that, and that's the  
4 decrease in the tar delivery over that period of  
5 time. I think the tar delivery since  
6 1950-something has come down about 70 percent in  
7 the products that we have sold.

8 As I have tried to make the point, that  
9 decrease in tar delivery during that period of  
10 time was another path that the company had taken.  
11 And the epidemiology evidence that has been  
12 published strongly suggested, or, as Dr. Hammond  
13 said, very strongly suggests that these lower tar  
14 products are reducing risk. It is not simply that  
15 these are little experiments that we have done.

16 And I think if I might, you are  
17 impugning, I would guess, the good faith of the  
18 company in these efforts. Is that correct?

19 Q. (Nodding head.)

20 A. And I would say on two levels: One, on  
21 the development of low-tar products that started  
22 in the '50s that continue to this day, these  
23 different paths that we have taken, some of them  
24 have ended up nowhere. Some of them we couldn't  
25 commercialize. Some of them we have and they

1 failed.

2 I would say if you look at any large  
3 company that sells a variety of products, you are  
4 going to have more often than not failures than  
5 successes. And I think we have done -- taken a  
6 good faith effort to approach this. We have  
7 succeeded in some things and failed in others, but  
8 not because we hadn't tried.

9 MR. THOMAS: Do I still have another 30  
10 seconds?

11 MR. COFER: No. You used my five and one  
12 more.

13 Stay right there. I'm sorry.

14 THE COURT: Proceed.

15

16 REDIRECT EXAMINATION

17

18 BY MR. COFER:

19 Q. There were questions about INBIFO and  
20 documents about INBIFO. Let me ask you first this  
21 question: Is there anything inherently wrong with  
22 doing research in Europe?

23 A. No. We do it, but I can think of at  
24 least a half dozen major corporations that also do  
25 it in various parts of the world, including

1 Europe.  
2 Q. Defendant's Exhibit 677. Is this in  
3 evidence?  
4 INBIFO, Page 4, Philip Morris document,  
5 "Why do we need INBIFO?"  
6 Look at the monitor, if you would,  
7 please.  
8 "A. Decrease in available domestic  
9 contract laboratories.  
10 "1. Several labs have folded.  
11 Industrial biotests.  
12 "2. Regulatory agencies requiring more  
13 and more product testing. EPA, TOSCA, NIOSH,  
14 Consumer Product Safety Commission."  
15 Is it true that when Philip Morris bought  
16 INBIFO there were other people competing for a  
17 scarce number of labs in the U.S.?  
18 A. It is still the same situation today.  
19 Q. A lot of people competing for a scarce  
20 resource?  
21 A. Same situation today.  
22 Q. "B. Long lead time required to initiate  
23 studies in contract labs.  
24 "Hazelton Laboratories."  
25 Philip Morris did work at Hazelton,

1 didn't it?

2 A. Yes.

3 Q. "Altosid inhalation study, \$20,000,  
4 30-day inhalation study required nine months to  
5 complete"?

6 A. Our 90-day inhalation studies actually  
7 take two years to finish the analysis and get the  
8 report out.

9 Q. "C. Security." In the interest of time,  
10 I'm going to keep moving.

11 "Control. 1. Mix of bioassays and  
12 priorities can be tailored to PM USA needs.

13 "Experiments can be terminated at will  
14 without delay."

15 If you owned it, it allowed you to  
16 conduct the experiments you wanted to conduct. It  
17 allowed you, if you decided if the experiment  
18 wasn't going anywhere, control, how the  
19 experiments were conducted, right?

20 A. Yes.

21 Q. Second page of that.

22 "Why do we need INBIFO?

23 "Additive testing."

24 You have talked about additives.

25 "Hunter Committee. Possible extension to

1 cigarette parameter."  
2           What's the Hunter Committee?  
3       A.    A UK committee, a UK committee that  
4 became part of the Department of Health. They are  
5 the ones that determine what additives and  
6 ingredients we can use and what additives we can  
7 use in cigarettes sold in the UK.  
8       Q.    "French additive listing." Were the  
9 French government requiring additives to be  
10 listed?  
11      A.    Still do.  
12      Q.    Does INBIFO provide support for  
13 cigarettes sold in France?  
14      A.    Everywhere in the world.  
15      Q.    And then the last one, is that focused?  
16      A.    Yes.  
17      Q.    "Maintain competitive stance.  
18            "Other companies doing long-term testing.  
19            "L&M patent."  
20            That's Liggett and Myers, right?  
21            And "additives testing"?  
22            Did Philip Morris want to stay  
23 competitive --  
24      A.    Yes.  
25      Q.    -- with respect to other companies?

1           Okay. A couple of last questions. How  
2 many employees does Philip Morris have worldwide?  
3           MR. THOMAS: Objection. Let's approach.  
4                       (Discussion at the bench  
5                       off the record.)  
6           MR. COFER: I will rephrase that.  
7 BY MR. COFER:  
8           Q. Let me rephrase that question.  
9           How many employees does Philip Morris  
10 Incorporated have?  
11          A. About 170,000.  
12          Q. 170,000 today. I assume that there has  
13 been some turnover over the years?  
14          A. Yes.  
15          Q. Any sense of the number of total  
16 employees who have worked for Philip Morris  
17 Incorporated?  
18          A. I would guess it is in the millions over  
19 30 years.  
20          Q. You would agree a bunch of people?  
21          A. Yes.  
22          Q. Do all those employees create documents  
23 every single day in a job?  
24          A. I actually asked somebody how many  
25 documents we have turned over already, and the

1 latest count, as of last week, was over 25 million  
2 pages of documents.

3 Q. Do you agree with everything that some  
4 employee of Philip Morris has written in a  
5 document?

6 A. No, I don't.

7 Q. As a scientist with some experience in  
8 this area, which do you think is more important in  
9 terms of judging the conduct of the company, what  
10 they did, or some documents where people may have  
11 said some things?

12 A. To me, it has always come down to how  
13 they have actually behaved.

14 Q. One last line of questioning. Financial  
15 bias. And I will try to shorten this up. We are  
16 running low on time.

17 As I understood the gist of Mr. Thomas'  
18 questions, if you were still full-time with the  
19 Medical College of Virginia, you would only make  
20 \$150,000 a year if you didn't consult, is that  
21 right?

22 A. That's right.

23 Q. But at Philip Morris last year you made  
24 250 instead of 150, right?

25 A. Yes.



1 Q. So the question I guess is, was there  
2 financial incentive to stay at Philip Morris,  
3 right?  
4 A. No.  
5 Q. That's the question.  
6 A. Yes.  
7 Q. Let me ask you this. Are you married,  
8 Dr. Carchman?  
9 A. Yes.  
10 Q. How long have you been married?  
11 A. A little over 20 years.  
12 Q. Has your wife worked over the years?  
13 A. Yes.  
14 Q. Tell the jury your wife's background and  
15 qualifications are.  
16 A. She has an M.D., Ph.D. and J.D.  
17 Q. She's a medical doctor?  
18 A. Yes.  
19 Q. She's a lawyer?  
20 A. Yes.  
21 Q. She has a Ph.D.?  
22 A. Yes.  
23 Q. She has had gainful employment?  
24 A. Yes.  
25 Q. Over the years, have there been years

1 when she has made more money than you?

2 A. Absolutely.

3 Q. Why did you stay at Philip Morris for  
4 those ten years?

5 A. And maybe the follow-up question is why  
6 am I here? Because there are some projects and  
7 people --

8 MR. THOMAS: I object. I realize it was  
9 maybe a question he was going to ask, but he is  
10 supposed to ask the questions.

11 I have to object when you start asking  
12 the questions.

13 THE COURT: Okay. Folks, everybody,  
14 counsel, objections in a legal form, please.  
15 Don't discuss with the witness what he is or  
16 isn't doing. Let's not lose all sense of  
17 decorum here.

18 MR. THOMAS: Object. Form.

19 THE COURT: We are going to proceed.

20 MR. COFER: Okay.

21 THE COURT: The witness shouldn't  
22 volunteer answers to questions not asked.

23 BY MR. COFER:

24 Q. Why did you stay at Philip Morris? Was  
25 it the money?

1 A. No.

2 Q. So why did you stay?

3 A. The challenge that was before me was one  
4 that I wanted to try to address.

5 Q. And why are you doing today what you are  
6 doing?

7 A. Because there is a story to tell in this  
8 that I think reflects the people. I can't speak  
9 about the company. I can only speak about the  
10 people that I have known over the years. I have a  
11 commitment to the people and projects that I was  
12 involved in over the ten years I was there.

13 MR. COFER: Dr. Carchman, thank you very  
14 much.

15 THE COURT: Go ahead and take a chair  
16 over here.

17 Jurors, we will recess for today, and I  
18 need you back at nine o'clock tomorrow. Leave  
19 your notes here. Don't discuss the case.

20 Watch your step coming on out.

21 Good evening.

22

23 (Open court; jury not  
24 present.)

25

1 THE COURT: Would somebody get that door,  
2 please? Thank you.

3 Anything for the record from the parties?  
4 MR. COFER: Nothing for the defense, Your  
5 Honor.

6 MR. THOMAS: No, Your Honor.

7 THE COURT: Let me just ask that we try  
8 to take a few steps back and regain a few of the  
9 formalities of the proceedings. I know everyone  
10 is getting familiar with each other the longer  
11 we are here. But kneeling on chairs during  
12 questioning really isn't appropriate decorum.  
13 You need to keep your feet on the ground,  
14 Mr. Thomas. It is sort of the counterpart to  
15 sitting on tables.

16 And I know you gentlemen are as charming  
17 as can be and part of this is deliberate. We  
18 need a little less charm and a little more  
19 direct focus on what's going on. And let's try  
20 to keep on task here and save all that for  
21 closing, because you are all going to need as  
22 much charm as you can muster to keep the jury's  
23 attention.

24 And when we get to the subject of  
25 attention, I want to tell you that Juror No. 10,

1 who is Ms. Barton, has communicated to the clerk  
2 that she and other jurors are bothered by  
3 Mr. Darcy, who is now seated by seat 7 in the  
4 corner. What they communicated to Mr. Rice is  
5 that they -- other jurors are tired of trying to  
6 keep him awake, and they find his snoring  
7 distracting. They are concerned that it is  
8 unfair to all of you, to the parties, that he  
9 may be falling asleep first thing in the  
10 morning.

11 I'm passing on a juror observation. To  
12 the extent that it calls for a response by any  
13 of the parties, I'm just giving you a  
14 communication that was passed to me. I actually  
15 have a hard time seeing that juror because of  
16 the television monitor, so I'm not really in a  
17 position to jolt him awake if I see him falling  
18 off. But they also don't want to get him into  
19 trouble. They are just telling us information.

20 MR. THOMAS: It seems like when he  
21 decided to offer a different chair position,  
22 unfortunately, it resulted in a position for him  
23 so that his head can lean against the wall,  
24 which I think has made it more difficult for him  
25 to stay awake.

1 THE COURT: Well, gosh, if anyone has a  
2 suggested solution, I would be happy to consider  
3 it. If anybody sees him asleep, I will be happy  
4 to call him on it, if you want me to.

5 As I say, where the television monitor is  
6 positioned, I'm really not able to see when he  
7 is losing us, if he is losing us. I wasn't  
8 aware that we had a sleeping juror. And now you  
9 know the juror has told us.

10 You may have some concerns about the  
11 witness you want to raise in the morning. If  
12 you will all be here at 8:45, we can take those  
13 up and then proceed.

14 It looks like Ms. Dewees is making an  
15 appointment for 11:45 Thursday morning. I don't  
16 yet know when that means she has to go, but we  
17 may be able to not lose a lot of time as a  
18 result of that.

19 MR. GAYLORD: Did you say 11:45?

20 THE COURT: That's the information I have  
21 right now. I don't know how far away it is. It  
22 may be a 15-minute deal or half an hour deal. I  
23 just don't know. She has an issue that she  
24 needs to discuss with a physician and time is of  
25 concern to her.

1           There we are. Anything else for tonight  
2   for the record?  
3           Okay. See you tomorrow.  
4                           (Evening recess.)  
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1 STATE OF OREGON

2 ss.

3 County of Multnomah

4

5 I, Dennis Apodaca, Official Court Reporter of  
6 the Circuit Court of the State of Oregon, Eleventh  
7 Judicial District, certify that I reported in  
8 stenotype the foregoing proceedings in the  
9 above-entitled case.

10 I further certify that my stenotype notes were  
11 reduced to transcript form by Computer-Aided  
12 Transcription under my direction.

13 And I further certify that pages 1 through 112  
14 contain a full, true, and accurate record of my  
15 stenotype notes.

16 Dated this 16th day of March, 1999, at  
17 Portland, Oregon.

18

19

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21                      ÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄ

22 Dennis Apodaca  
Official Court Reporter

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